

**Volume 39, No. 10, Pages 8368 to 9293,
July 23 – August 15, 2024**

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 39, No. 10, Pages 8368 to 9293, July 23 – August 15, 2024



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Federal Communications Commission
Washington, D.C. 20554

August 5, 2024

DA 24-701

VIA ELECTRONIC MAILING

Kevin Kloster
Albedo Space Corp.
2927 E 14th Street B
Austin, TX 78702
kevin@albedo.com

Re: Albedo Space Corp., ICFS File No. SAT-LOA-20240603-00120; Call
Sign: S3203

Dear Mr. Kloster:

On June 3, 2024, Albedo Space Corp (Albedo) filed the above-captioned application requesting authority to deploy and operate a space station, to be known as Albedo Space Vehicle 1.

This application is dismissed due to failure to submit the required application materials.¹ Section 25.114(d) of the Commission's rules the Commission's rules requires that an applicant include with their application a narrative, which includes, *inter alia*, an overall description of the system and public interest considerations in support of grant.² Albedo did not file this information. Additionally, Albedo did not provide an exhibit in response to question 40 of the Form 312.³ To date, Albedo has not filed the applicable narratives, ownership information, or ITU filing materials⁴ as required under the Commission's rules. Accordingly, this application is dismissed, without prejudice to refiling.

Sincerely,

Merissa L. Velez
Chief, Satellite Programs and Policy Division
Space Bureau

¹ We note that the applicant did not file the required application fee per 47 CFR § 25.110(f). Failure to file an application fee is also grounds for dismissal.

² See 47 CFR § 25.114(d).

³ See Albedo Space Corp, Form 312.

⁴ See 47 CFR § 25.111(d).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-704

Released: August 1, 2024

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

CC Docket No. 02-6
WC Docket No. 02-60
WC Dockets Nos. 23-353, 19-126
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**

Dismissed on Reconsideration³

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). Section 54.719(b) of the Commission's rules provides 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. Section 54.719(c) of the Commission's rules provides that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR §§ 54.719(b)-(c). In this Public Notice, we have reclassified as Requests for Waiver any appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review any appeals seeking a waiver of the Commission's rules but that are, in fact, seeking review of a USAC decision.

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

³ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

On reconsideration, Resurrection Christian School again states that its initial FCC Form 471, Application No. 241018367, was filed timely but contained a ministerial and/or clerical error because the services requested were misclassified. As such, the petitioner argues that its waiver should be granted consistent with the *Ann Arbor Order*.
(continued....)

Bloomfield School District R 14, MO, Application No. 241040124, Petition for Reconsideration, CC Docket No. 02-6 (filed June 6, 2024)

La Feria Independent School District, TX, Application No. 241040021, Petition for Reconsideration, CC Docket No. 02-6 (filed June 17, 2024)

Resurrection Christian School, CO, Application No. 241039980, Petition for Reconsideration, CC Docket No. 02-6 (filed June 6, 2024)

Granted⁴

(Continued from previous page)

See 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, para. 2, nn.9, 17 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant entered the category of service on its FCC Form 471). We note, however, that correcting the category of service on this FCC Form 471 does not cure the underlying competitive bidding issue because Resurrection Christian School did not initially seek bids for the type of services it was seeking funding for on its FCC Form 471. *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) (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). When the petitioner finally followed the correct competitive bidding process and filed a new FCC Form 471, Application No. 231038186, the filing window had closed and there was no justification for waiving the deadline. *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, 9261-62, para. 13 (2010) (*Academy of Math and Science Order*) (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying a waiver of the Commission's rules).

Bloomfield School District R 14 did not provide any reason for filing its FCC Form 471 more than 30 days after the filing window deadline. On reconsideration, the school district does provide an argument for why its application was late, stating that the staff member responsible for filing the FCC Form 471 was out of the office for an extensive period due to military obligations and was not present when the window opened in January 2024. Bloomfield School District R 14 explains that due to a misunderstanding of the rules and a heavy work load, the filing window deadline was missed. 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 7, 2024, 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 Bloomfield School District R 14, the Commission has not waived the FCC Form 471 application filing deadline based on the circumstances described by the petitioner. *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 a waiver of the Commission's rules); *Request for Waiver by Greenfield Public School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 2122, 2124, para. 6 (WCB 2006) (*Greenfield Public School District Order*) (granting a waiver request only in a circumstance when the district's technology coordinator was unexpectedly called to active military duty in a time of war).

For these reasons, we dismiss these Petitions for Reconsideration.

⁴ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of
(continued....)

Allowing Deduction of Ineligible Costs⁵

Blackfoot Charter Community Learning Center, ID, Application No. 221035080, Request for Review, CC Docket No. 02-6 (filed June 26, 2024)

Eligible Entities⁶

Los Fresnos Consolidated Independent School District, TX, Application No. 231038186, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Mar. 6, 2024)⁷

FRN Includes Taxes and USF Fees⁸

Barrington Community Unit School District 220, IL, Application No. 221028435, Request for Review, CC Docket No. 02-6 (filed Nov. 28, 2023)

Granting Additional time to Respond to USAC with Information⁹

Advanced Telecom, Inc. (Yeshiva Ketana of Bensonhurst), NY, Application No. 231028770, Request for Review, CC Docket No. 02-6 (filed June 17, 2024)

Granting on Reconsideration – FCC Form 471 Filed Less than 30 Days Late Due to Unexpected

(Continued from previous page)

the equipment/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 deadlines 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 rule).

⁵ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aiken County Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8735, 8739-40, para. 9 (2007) (*Aiken County Public Schools Order*) (permitting applicants to remove ineligible services that triggered denials of their applications from their funding requests).

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

⁷ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by ABC Unified School District*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (granting waivers of appeal filing deadline when the petitioners submitted their appeals or waiver requests within a reasonable period of time after receiving actual notice of USAC's adverse decision).

⁸ See, e.g., *Requests for Review of the Decisions of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5186, 5188, para. 4 (WCB 2012) (*Diversified Computer Solutions Order*) (granting the appeal of a USAC invoicing decision where the requested service was within the scope of the contract and the approved funding request).

⁹ See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 1876 (WCB 2014) (*Ben Gamla Palm Beach Order*) (granting applicants' requests for review that received adverse decisions because they failed to respond to USAC's request for information within the USAC-specified time frame).

*Illness*¹⁰

Bath County School District, VA, Application No. 241039992, Petition for Reconsideration, CC Docket No. 02-6 (filed June 10, 2024)

Collegiate Charter School of Lowell, MA, Application No. 241024183, Petition for Reconsideration, CC Docket No. 02-6 (filed June 5, 2024)

Sunnyside School District 201, WA, Application No. 241039989, Petition for Reconsideration, CC Docket No. 02-6 (filed June 13, 2024)

*Granting on Reconsideration – FCC Form 471 Filed More than 30 Days Late Due to Serious Illness*¹¹

Chicago Ridge Public Library, IL, Application No. 241040112, Petition for Reconsideration, CC Docket No. 02-6 (filed June 7, 2024)

*Late-Filed FCC Form 471 Applications – Due to Circumstances Beyond Their Control*¹²

Montessori Regional Charter School, PA, Application No. 241040243, Request for Waiver, CC Docket No. 02-6 (filed June 18, 2024)

*Late-Filed FCC Form 471 Applications – Filed More than 30 Days Late Due to Serious Illness*¹³

Williamsburg Y Head Start, NY, Application No. 241040184, Request for Waiver, CC Docket No. 02-6 (filed June 24, 2024)

¹⁰ See, e.g., *Petitions for Reconsideration by Callisburg Independent School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 28 FCC Rcd 9459, 9461, para. 5 (WCB 2013) (*Callisburg Independent School District Order*) (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our prior decision); *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 absence due to illness”).

¹¹ See, e.g., *Callisburg Independent School District Order*, 28 FCC Rcd at 9461, para. 5 (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our prior decision); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Archdiocese of San Antonio et al.; Schools and Libraries Universal Service Support Mechanism, Establishing Emergency Connectivity Fund to Close the Homework Gap*, CC Docket No. 02-6, WC Docket No. 21-93, Order, 37 FCC Rcd 4879, 4882-83, paras. 7-8 (2022) (*Archdiocese of San Antonio Order*) (granting waiver requests for applications filed more than 30 days after the close of the filing window due to serious medical conditions).

¹² See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (*Abbotsford School District Order*) (granting waiver where the applicant filed within a reasonable period after the close of the filing window despite delays beyond its control).

Although the petitioner did not file its FCC Form 471 application until June 18, 2024, it filed its application as soon as possible after complying with other program rules. Montessori Regional Charter School also filed a timely FCC Form 471, Application No. 241030304, but needed to refile a new application when its service provider announced that it would not provide the E-Rate-supported services on that timely application.

¹³ See, e.g., *Archdiocese of San Antonio Order*, 37 FCC Rcd at 4882-83, paras. 7-8 (granting waiver requests for applications filed more than 30 days after the close of the filing window due to serious medical conditions).

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

Academie Lafayette District, MO, Application No. 241039896, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2024)

Agapeland Christian Academy, B. Wright Leadership Academy, Capistrano Valley Christian School, Cumberland Christian Academy, Detroit Cristo Rey High School, Grace Christian School, Kadima Hebrew Academy, Westminster Catawba Christian School, Application Nos. 241039382, 241039433, 241039436, 241039383, 241039385, 241039391, 241039393, 241039381, 241039388, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2024)

Albion Public Library, IA, Application Nos. 241039694, 241039666, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2024)

Cambridge Montessori School, MA, Application No. 241039606, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2024)

iBelieve Christian Academy, FL, Application Nos. 241039929, 241039921, Request for Waiver, CC Docket No. 02-6 (filed June 10, 2024)

Reading Public Schools, MA, Application Nos. 241039876, 241039869, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2024)

Revelation School of Florida, FL, Application No. 241039926, Request for Waiver, CC Docket No. 02-6 (filed June 11, 2024)

*Ministerial and/or Clerical Errors*¹⁵

Clayton Independent School District 10, OK, Application No. 241026143, CC Docket No. 02-6 (May 31, 2024, supplemented June 13 and 26, 2024)

North Scott Community School District, IA, Application No. 241007248, CC Docket No. 02-6 (June 6, 2024)

*Ministerial and/or Clerical Errors — FCC Form 486*¹⁶

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

¹⁵ *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 correct a pre-discount price on its FCC Form 471 to conform to the price on the source document).

¹⁶ See, e.g., *Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (WCB 2006) (*Glendale Unified School District Order*); *Request for Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15419 (WCB 2008) (*Harvey Public Library District Order*) (both orders granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486).

(continued....)

New Frontiers Public Schools, TX, Application No. 221039163, Request for Waiver, CC Docket No. 02-6 (filed June 13, 2024)

*Ministerial and/or Clerical Errors – Invoicing*¹⁷

Knoxville Community School District, IA, Application Nos. 221029011, 221029310, Request for Waiver, CC Docket No. 02-6 (filed Feb. 29, 2024)

*Service Substitution*¹⁸

GCI Communications Corp. (Northwest Arctic Borough School District, North Slope Borough School District), AK, Application Nos. 221001741, 221019333, Request for Waiver, CC Docket No. 02-6 (Jan. 24, 2024)

*USAC Decision Issued After Invoice Deadline*¹⁹

Lake Dallas Independent School District, TX, Application No. 211023510, Request for Waiver, CC Docket No. 02-6 (filed June 27, 2024)

(Continued from previous page) _____

Consistent with precedent, we also grant a waiver of the appeal filing deadline for New Frontiers Public Schools. *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 or USAC only a few days late or submitted their appeals within a reasonable period after receiving actual notice of USAC's adverse decision).

¹⁷ *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 2023 WL 345366, *3-4, paras. 7-9 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting waivers where the E-Rate invoice filers entered the incorrect application numbers). We also waive, to the extent necessary, section 54.720 of the Commission's rules because the petitioners filed their waiver requests within 60 days of discovering or receiving notice of the ministerial or clerical error. *See id.* at *5, para. 12.

¹⁸ *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Beaufort County Public School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 29 FCC Rcd 3124, 3125, para. 3 (WCB 2014) (*Beaufort County Public School District Order*) (granting service substitution appeals when the petitioners missed USAC's deadline for service substitution requests but complied with the Commission's requirements for service substitutions under 47 CFR § 54.504(d), and had a reasonable explanation for missing the deadline).

¹⁹ *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (*E-Rate Invoicing Deadline Rule Modification Order*) (authorizing the Bureau to grant a waiver in instances where a program participant was unable to timely submit an invoice because they were awaiting a post-commitment decision from USAC, or received a decision approving a post-commitment request or granting an appeal of a previously denied or reduced funding request after the invoice filing deadline had passed).

*Waiver of Special Construction Service Delivery Deadline*²⁰

Duckwater Shoshone Consortium, NV, Application No. 221022093, Request for Waiver, CC Docket No. 02-6 (filed June 24, 2024)

Denied*Cost-effectiveness*²¹

Single Path LLC (AAA Academy), IL, Application No. 921751, Request for Review, CC Docket No. 06-22 (filed Nov. 21, 2014)

*Late-Filed FCC Form 471 Applications*²²

Highfields Inc., MI, Application No. 241040235, Request for Waiver, CC Docket No. 02-6 (filed June 14, 2024)

Legends Academy, FL, Application No. 241040182, Request for Waiver, CC Docket No. 02-6 (filed June 18, 2024)

O'Fallon Public Library, IL, Application No. 241003717, Request for Waiver, CC Docket No. 02-6 (filed June 20, 2024)

Ouachita Christian School, LA, Application No. 241040081, Request for Waiver, CC Docket No. 02-6 (filed June 18, 2024)

Pace School, PA, Application No. 241040224, Request for Waiver, CC Docket No. 02-6 (filed June 11, 2024)

Rainbow Community School, NC, Application No. 241040227, Request for Waiver, CC Docket No. 02-6 (filed June 11, 2024)

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 County School District Order*) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that Duckwater Shoshone Consortium was unable to complete implementation for reasons beyond its control and made good faith efforts to comply with Commission rules and procedures. We waive the special construction service delivery deadline and direct USAC to provide the applicant until June 30, 2025 to complete its special construction project.

For these petitioners, we also waive any associated administrative or procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. See *supra* note 4.

²¹ *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26432, para. 54 (2003) (explaining that a request for routers at prices two or three times greater than the prices available from commercial vendors would not be cost-effective, absent extenuating circumstances).

²² 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 a waiver of the Commission's rules).

The Learning Community Charter School, RI, Application No. 241040213, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2024)

Tulia Independent School District, TX, Application Nos. 241040241, 241040242, Request for Waiver, CC Docket No. 02-6 (filed June 17, 2024)

Ulysses Unified School District 214, KS, Application No. 241040217, Request for Waiver, CC Docket No. 02-6 (filed June 10, 2024)

Van Meter Community School District, IA, Application No. 241040214, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2024)

*Late-Filed Invoice or Invoice Deadline Extension*²³

Central Pennsylvania Institute of Science and Technology, PA, Application No. 221037085, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Rural Health Care Program
WC Docket No. 02-60

Denied

*Waiver of the 60-Day Appeal Deadline*²⁴

Clinico, LLC, OK, WC Docket No. 02-60, Funding Request Number 19653221 (filed Feb. 25, 2021)

Tidelands Health/Georgetown Memorial Hospital, SC, WC Docket No. 02-60, Funding Request Number 19648661 (filed Feb. 9, 2021)

Rural Digital Opportunity Fund
WC Dockets Nos. 23-353, 19-126

Conditional Authorization of VOIP Effective July 8, 2024

As of July 8, 2024, CableOne VOIP LLC (VOIP LLC) has satisfied all conditions for its authorization to

²³ 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 for a waiver of the Commission's rules).

²⁴ See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 08-71, Public Notice, 35 FCC Rcd 4490, 4496, n.20 (WCB 2020); *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 (WCB 2010) (*Agra Public Schools Order*) (denying appeals on the grounds that the petitioners failed to submit their appeals within 60 days as required by the Commission's rules and failed to show special circumstances necessary for the Commission to waive the deadline). These requests for waiver of the appeal filing deadline were filed long after the deadlines to file an appeal, with inadequate special circumstances given for these lengthy delays.

receive the Rural Digital Opportunity Fund (RDOF) support assigned to it from Nova Cablevision, Inc.²⁵

Contribution Methodology

WC Docket No. 06-122

Denied

*Request for Waiver of FCC Form 499-A Revision Deadline*²⁶

Agility Communications Group, LLC, Request for Waiver, WC Docket No. 06-122 (filed May 23, 2024)

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

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²⁵ *Domestic Section 214 Application Granted for the Assignment of Certain Assets of Nova Cablevision, Inc. to Cable One, Inc. and Cable VOIP LLC*, WC Docket Nos. 23-353, 10-90, Public Notice, DA 24-389 at 6-8 (Apr. 25, 2024) (granting the assignment of certain assets (including RDOF support) from Nova Cablevision to VOIP LLC and authorizing VoIP LLC to receive the assigned RDOF support, conditioned upon the submission of proof of consummation of the transaction and ETC designation for the assigned area, and USAC's approval of a letter of credit securing the requisite amount of support and a Bankruptcy Opinion Letter). Letter from Chérie R. Kiser and Angela F. Collins, Counsel to CableOne, Inc. and CableOne VOIP LLC to Marlene H. Dortch, Secretary, FCC (filed July 8, 2024) (detailing the satisfaction of all conditions); *CableOne VoIP LLC d/b/a Sparklight IL, Application for Designation as an Eligible Telecommunications Carrier to Receive Rural Digital Opportunity Fund (Auction 904) Support*, Illinois Commerce Commission, Docket No. 23-0694, Order (July 2, 2024) (granting VOIP LLC's ETC designation for the assigned areas).

²⁶ 47 CFR § 54.720 (requiring that petitioners file their appeals within 60 days of an adverse USAC decision). *See, e.g., Agra Public Schools Order*, 25 FCC Rcd at 5684, para. 1; *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 (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 show special circumstances necessary for the Commission to waive the deadline). On August 2, 2022, USAC rejected Agility's revised 2021 Form 499-A based on the fact that it was submitted after the one-year downward revision deadline passed. On January 4, 2023, Agility Communications Group, LLC (Agility) filed an appeal of USAC's rejection of its revised 2021 Form 499-A based on the one-year downward revision deadline. On March 27, 2023, USAC denied the appeal. *See* Email from Universal Service Administrative Co., Contributor Appeals, to Controller, Agility Communications Group (Mar. 27, 2023). Agility filed its appeal with the Commission on May 23, 2024 well after the 60 day deadline set forth in 47 CFR § 54.720.

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

In the Matter of

Charter Communications, Inc.

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)

File No.: EB-SED-23-00035290

CD Acct. No.: 202432100005

FRN: 0023684756

ORDER

Adopted: July 29, 2024**Released: July 29, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree with Charter Communications, Inc. (Charter) to resolve the Bureau's investigation into whether Charter violated the Commission's rules related to network outages, including those impacting 911 service. The failure to notify affected public safety answering points (PSAPs) of an outage impedes the ability of public safety officials to mediate the effects of an outage by notifying the public of alternate ways to contact emergency services. The failure to provide required outage notifications to the Commission through the Network Outage Reporting System (NORS) impairs the Commission's ability to assess the magnitude of major outages, identify trends, and promote network reliability best practices that can prevent or mitigate future disruptions. Therefore, it is imperative for the Commission to hold providers, like Charter, accountable for fulfilling these essential obligations. To settle this matter, Charter admits that it: (1) failed to timely notify more than 1,000 PSAPs of an outage on February 19, 2023 (Outage); (2) failed to meet reporting deadlines for reports in the NORS associated with the Outage, and separate outages on March 31 and April 26, 2023; and (3) failed to meet other NORS reporting deadlines associated with hundreds of planned maintenance outages, all in violation of the Commission's rules. Charter has agreed to implement a robust compliance plan, including cybersecurity provisions related to compliance with the Commission's 911 rules, and will pay a \$15,000,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Charter's compliance with its obligations under sections 4.9 and 9.11 of the Commission's rules, including Charter's provision of notifications to PSAPs and to the Commission of network outages.¹

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

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

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

¹ 47 CFR § 4.9.

² See *id.* § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Maureen O'Connell, Vice President, Government Affairs, 601 Massachusetts Ave. NW, Suite 400 West, Washington, D.C. 20001, and Suzanne M. Tetreault, Wilkinson Barker Knauer, LLP, 1800 M Street NW 800N, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of

Charter Communications, Inc.

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File No.: EB-SED-23-00035290

CD Acct. No.: 202432100005

FRN: 0023684756

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) and Charter Communications, Inc. (Charter or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether the Company violated the Commission's 911 Rules in connection with a network outage experienced by the Company on February 19, 2023 (Outage), two additional outages on March 31, 2023, and April 26, 2023, and hundreds of planned maintenance-related outages that Charter failed to report to the Commission. To resolve this matter, the Company agrees to the terms and conditions below, including an admission that it violated section 4.9(g) of the Commission's Rules requiring the timely notification of reportable outages to Public Safety Answering Points (PSAPs) and the filing of Network Outage Reporting System (NORS) reports with the Commission, the implementation of a robust compliance plan, and payment, in accordance with the terms hereof, of a \$15,000,000 civil penalty.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "911 Rules" means sections 4.9 and 9.11(b)(2) of the Rules, including the Notification Rules.¹
 - (b) "Act" means the Communications Act of 1934, as amended.²
 - (c) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "CD Acct No." means the account number 202432100005, associated with payment obligations described in paragraph 20 of this Consent Decree.
 - (f) "Charter" or "Company" means Charter Communications, Inc., and its subsidiaries, predecessors-in-interest, successors-in-interest, and assigns.
 - (g) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (h) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission, to which the Company is subject by virtue of its business activities, including but not limited to the 911 Rules.
 - (i) "Compliance Plan" means the compliance obligations, program, and procedures

¹ 47 CFR §§ 4.9, 9.11(b)(2).

² 47 U.S.C. § 151 et seq.

described in this Consent Decree at paragraph 16.

- (j) “Covered Employees” means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of, duties that relate to the Company’s responsibilities under the 911 Rules.
- (k) “Effective Date” means the date by which both the Bureau and the Company have signed the Consent Decree and the Bureau has released an Adopting Order.
- (l) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-23-00035290.
- (m) “Notification Rules” means section 4.9 of the Rules, and other Communications Laws governing the required notification to PSAPs about problems in the delivery of 911 calls, and the submission of Network Outage Reporting System (NORS) filings with the FCC.³
- (n) “Operating Procedures” means the internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.
- (o) “Parties” means Charter and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 4.9(g)(1)(i) of the Commission’s Rules requires interconnected voice over Internet protocol (VoIP) service providers, in the event of an outage that “potentially affects a 9-1-1 special facility,” to notify the designated official at the affected PSAPs of the outage “as soon as possible” and “convey to that person all available information that may be useful in mitigating the effects of the outage . . .” after discovering that they have experienced an outage of at least 30 minutes that potentially affects a special facility as defined in section 4.5(e).⁴ Both late and never-filed notifications are violations of section 4.9(g)(1)(i). Likewise, section 4.9(g)(1)(i) requires interconnected VoIP service providers to timely file a NORS notification with the Commission within 240 minutes of discovering that the outage lasted at least 30 minutes and potentially affected a 911 special facility.⁵ Interconnected VoIP service providers must follow up with the filing of a final report with the Commission within thirty days after discovering the outage.⁶ Pursuant to section 4.9, providers are obligated to file NORS reports for all outages that meet the outage thresholds, irrespective of the cause,⁷ with the Commission explicitly including planned maintenance within this scope.⁸

4. On February 19, 2023, Charter’s network monitoring tools began to trigger alerts indicating problems with a portion of its voice infrastructure network.⁹ It was determined that Charter’s

³ 47 CFR § 4.9.

⁴ *Id.* § 4.9(g)(1)(i).

⁵ *Id.* § 4.9

⁶ *Id.* § 4.9(g)(2).

⁷ *Id.* § 4.9.

⁸ *See New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16889, para. 114 (2004) (rejecting the contention that planned outages should not be reportable and concluding that, regardless of the reason for it, any outage that meets the threshold must be reported.)

⁹ *See* Response to Letter of Inquiry, Counsel to Charter, Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau at 5-6 (July 31, 2023) (LOI Response).

network was the target of a minor, low and slow Denial of Service (DoS) attack.¹⁰ As a result, Charter experienced an interconnected VoIP telephony service outage that affected approximately four hundred thousand (400,000) residential and commercial interconnected VoIP customers in portions of 41 states and the District of Columbia.¹¹ Charter was able to restore service in less than four (4) hours.¹² According to the Cybersecurity and Infrastructure Agency (CISA), “there is no way to completely avoid becoming a target of a DoS or DDoS attack...”¹³ Charter maintains that it adheres to CISA’s best practices and the Cybersecurity Framework of the National Institute of Standards and Technology (NIST).¹⁴

5. The Outage met the section 4.9(g)(1) and (2) threshold for NORS reporting, but Charter failed to file the required NORS notification until almost six (6) hours after it was due.

6. Additionally, Charter was required to notify all of the impacted PSAPs “as soon as possible,” but due to a clerical error associated with the sending of an email notification, over 1,000 PSAPs were not contacted.¹⁵

7. On June 1, 2023, the Bureau issued a Letter of Inquiry (LOI) to the Company directing it to submit a sworn written response to a series of questions relating to the Outage, and the Bureau issued follow-up questions on September 13, 2023, and October 19, 2023.¹⁶ The Company timely responded to the LOI and to follow-up inquiries.¹⁷

8. As part of the investigation, EB asked Charter to identify and provide detail on other outages that met the NORS reporting threshold.¹⁸ In response, Charter indicated that based on a misunderstanding of the Commission’s rules, hundreds of planned maintenance events may have met the criteria for filing a NORS report but were never submitted.¹⁹ Thereafter, Charter also identified two

¹⁰ *Id.*

¹¹ *Id.*; *see also* Charter Outage of February 19, 2023 (NORS Final Report # ON-00438745). The affected states included portions of Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

¹² LOI Response at 8; *see also* Charter Outage of February 19, 2023 (NORS Final Report # ON-00438745).

¹³ Dep’t of Homeland Sec., Cybersecurity and Infrastructure Sec. Agency, “Understanding Denial of Service Attacks,” <https://www.cisa.gov/news-events/news/understanding-denial-service-attacks> (last visited July 1, 2024).

¹⁴ *See* Response to Second Further Letter of Inquiry, Counsel to Charter, Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau at 3-5, 9 (Nov. 13, 2023).

¹⁵ 47 CFR § 4.9(g)(1)(i); LOI Response at 24; *see also* Response to Follow-Up Letter of Inquiry at 1-2, Counsel to Charter, Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 27, 2023) (Follow-Up LOI Response) (on file in EB-SED-23-00035290).

¹⁶ *See* Letter of Inquiry from Spectrum Enforcement Division, FCC Enforcement Bureau, to Charter Communications, Inc. (June 1, 2023) (LOI); E-mail from Spectrum Enforcement Division, FCC Enforcement Bureau, to Counsel for Charter Communications, Inc. (Sept. 13, 2023, 14:24 EDT); E-mail from Spectrum Enforcement Division, FCC Enforcement Bureau, to Counsel for Charter Communications, Inc. (Oct. 19, 2023, 10:35 EDT); E-mail from Spectrum Enforcement Division, FCC Enforcement Bureau, to Counsel for Charter Communications, Inc. (Jan. 19, 2024, 15:01 EDT) (Disclosure Follow-up Email) (all on file in EB-SED-23-00035290).

¹⁷ *See supra* notes 9 and 14; *see also* Response to Second Follow-Up Letter of Inquiry, Counsel to Charter, to Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 13, 2023) (all on file in EB-SED-23-00035290).

¹⁸ LOI, *supra* note 16, at 10.

¹⁹ Follow-Up LOI Response, *supra* note 15, at 4.

additional, unplanned outages—which occurred on March 31, 2023, and April 26, 2023—that each met the NORS reporting threshold but Charter failed to report.²⁰

9. The Company and the Bureau subsequently engaged in settlement negotiations. To resolve this matter, the Company and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

11. **Jurisdiction.** The Company 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.

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

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against the Company concerning the matters that were the subject of the Investigation, or to set for hearing the question of the Company's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.²¹

14. **Admission of Liability.** Charter admits for the purpose of this Consent Decree, for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that by its actions described in paragraphs 4 through 9 of this Consent Decree, Charter (i) failed to timely notify certain PSAPs of the Outage, (ii) failed to timely file NORS reports associated with the Outage, and the March 31, 2023 and April 26, 2023 outages, and (iii) failed to meet other NORS reporting deadlines associated with hundreds of unrelated planned maintenance outages, all in violation of the Notification Rules.

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Company shall designate a vice president or above with requisite corporate, budget, and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for overseeing the development, implementation, and administration of the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the 911 Rules prior to assuming his/her duties. The Compliance Officer must report in writing at least every six months to Charter's Chief Executive Officer on Charter's efforts during the relevant period to comply with the terms and conditions of this Consent Decree.

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

²⁰ See Response to Disclosure Follow-up Email, Counsel to Charter, to Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 26, 2024) (on file in EB-SED-23-00035290).

²¹ See 47 CFR § 1.93(b).

future compliance with the 911 Rules and the terms and conditions of this Consent Decree. By the dates set forth below, and continuing until the Termination Date of this Consent Decree, Charter shall develop and implement, or, where processes already exist, improve upon, processes related to the 911 Rules promptly to (1) *Govern* the Company's risk management strategies, expectations, and policies to identify, protect against, detect, respond to, and recover from outages; (2) *Identify* risks that could result in outages; (3) *Protect* against such risks; (4) *Detect* outages when they occur; (5) *Respond* to such outages with remedial actions; and (6) *Recover* from such outages as soon as practicable. With respect to the 911 Rules, Charter will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Charter shall establish Operating Procedures that all Covered Employees shall follow to help ensure that Charter complies with the 911 Rules. The Operating Procedures shall include, but are not limited to, the following:
 - i. **Develop Compliance Checklist.** Charter shall develop a compliance checklist that describes the steps for Charter to follow to comply with the 911 Rules.
 - ii. **Review and Improve PSAP Notification Procedures.** Charter shall establish and implement Operating Procedures (including, as necessary, reviewing and revising any existing procedures) to ensure that Charter has the ability promptly to identify PSAPs potentially impacted by a network outage and to notify such PSAPs, as required under section 4.9 of the Commission's Rules. Specifically, Charter will develop within sixty (60) days and implement within one-hundred and twenty (120) calendar days after the Effective Date, an automated PSAP notification system to automatically contact PSAPs after a network outage that meets the reporting thresholds in the 911 Rules. In developing and implementing this system, Charter shall without limitation:
 - 1. Implement a monitoring system that checks the status of Charter's network to identify potential outages or disruptions in service.
 - 2. Maintain an updated database of contact information for relevant PSAPs, including points of contact, phone numbers, emails, and any special requirements for reporting network outages.
 - 3. Develop an automated protocol to initiate contact with potentially affected PSAPs in case of a network outage.
 - 4. Ensure the automated PSAP notification system can provide the information set forth in the *PSAP Notification Order*.²² In addition, ensure compliance with 47 C.F.R. § 4.9(h)(2) at the time those rules become effective.²³
 - 5. Ensure that the automated PSAP notification system has a confirmation mechanism that allows Charter to verify delivery.
 - 6. Conduct quarterly testing of the automated PSAP notification system to ensure the system's functionality and that notifications are being timely sent.

Additionally, beginning on the first anniversary of the Effective Date and

²²See *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Improving 911 Reliability, New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80, 13-75, 04-35, Second Report and Order, FCC 22-88 at 6, para. 14 (Nov. 18, 2022) (*PSAP Notification Order*).

²³ The effective date of 4.9(h) has been delayed until announcement in the Federal Register. Federal Communications Commission, *Disruptions to Communications; Improving 911 Reliability*, Final Rule, 88 Fed. Reg. 9756 (Feb. 15, 2023). The compliance requirement remains if this provision becomes effective and is codified in a different subsection of section 4.9 of the Rules.

continuing annually until the Termination Date of this Consent Decree, Charter shall: (a) review its PSAP notification procedures to identify modifications that could reduce the time needed to identify and notify potentially impacted PSAPs; and (b) within thirty (30) days of such review, implement any such modifications as are economically feasible. If Charter is unable to implement such modification within thirty (30) days, Charter shall complete implementation within a reasonable amount of time and notify the Commission within the thirty (30) day time-period of details on the nature of the modification and a timeline for implementation.

- iii. **Review and Implement Best Practices.** Within ninety (90) calendar days of the release by the Communications Security, Reliability, and Interoperability Council (CSRIC) of any new and applicable best practices relating to 911 service, Charter shall evaluate and incorporate, where appropriate, such new best practices into the Operating Procedures and shall establish a timeline for their implementation following the release of such new and applicable best practices. Additionally, within ninety (90) days after the Effective Date, Charter shall evaluate and incorporate, where appropriate, the CSRIC Best Practices set forth in Appendix A. If implementation of any of the best practices under this paragraph shall exceed one hundred and eighty (180) days, Charter shall notify the Commission, specifying the applicable best practice and Charter's implementation timeline.
- iv. **Perform 911 Operational Risk Assessments.** Charter shall maintain, regularly review, and revise (as necessary) a risk-assessment program designed to identify, assess, and remediate risks to Charter's ability to transmit 911 calls, including third-party or vendor risks. Charter shall also identify the primary risks to Charter's 911 transmission and delivery network and implement risk and management controls and methodologies to address those risks, with specific attention to those issues that were identified as the root cause of the Outage and other contributing factors underlying the root cause. Charter shall utilize an industry-recognized risk control methodology that provides, at a minimum, that:
 - 1. Charter shall develop key risk indicators for compliance with the 911 Rules.
 - 2. Charter shall assess, at least annually, internal and external risks to the security, integrity, and resiliency of Charter's network and its ability to transmit 911 calls consistent with the 911 Rules.
 - 3. Charter shall assess and test, at least annually, the sufficiency and effectiveness of any safeguards in place in paragraph 16(a)(iv)(2) to address the identified risks and timely modify such safeguards, as appropriate.
 - 4. Prior to approving any new software, hardware or systems that impact Charter's ability to transmit 911 calls, Charter shall perform a risk analysis of Charter's network and its ability to transmit 911 calls. Where feasible, Charter shall employ appropriate controls to address risk prior to installing such new software, hardware or systems that could impact Charter's ability to transmit 911 calls.
- v. **Create and Maintain NORS Evaluation and Reporting System.** Develop within thirty (30) calendar days and implement within sixty (60) calendar days after the Effective Date, a system to automatically determine when a NORS report needs to be filed because of a network outage that meets the reporting thresholds in the 911 Rules. The system shall include, but not be limited to:
 - 1. Create and improve upon network outage report tracking tools to, at a minimum:

- a. monitor in real-time network outages to identify the scope, severity, and duration of the outage;
 - b. establish internal protocols and workflows for handling outage analysis and reporting, including developing reporting that can correlate assigned or working telephone numbers to a voice circuit or service to determine whether NORS reporting thresholds have been met;
 - c. implement checks and balances to verify the accuracy and completeness of the outage data before submission of the final report to the NORS;
 - d. incorporate processes for notifications, escalations, and reminders to notify the Compliance Officer of missed reporting deadlines; and
 - e. review and refine network outage reporting processes based on incident analysis and feedback from Covered Employees on at least a monthly basis in order to enhance compliance with the 911 Rules.
 2. Within thirty (30) calendar days after the Effective Date, the Compliance Officer shall designate a Covered Employee to review, on a monthly basis, network outage data associated with Charter outages to verify that, for outages that meet the NORS reporting thresholds, Charter has timely filed, as applicable, all required Notifications, Initial Reports, and/or Final Reports for all reportable network outages. The designated Covered Employee shall report the results of these reviews to the Compliance Officer.
- vi. **Cybersecurity.** Charter has established and shall continue to maintain and evolve its overall cybersecurity risk management program in accordance with the voluntary cybersecurity framework established by the NIST²⁴ through the NIST Cyber Security Framework, other applicable industry standards and best practices, and applicable state and/or federal laws covering cybersecurity risk management and governance practices, including the following:
1. *Vulnerability Identification.* Charter shall maintain an active vulnerability management program to scan its environment for vulnerabilities consistent with the NIST Cybersecurity Framework. Charter shall maintain its active threat management effort, as appropriate.
 2. *Penetration Testing.* Charter shall maintain a penetration testing program that regularly tests, based on risk profile and criticality, its systems, applications, and network infrastructure for the purpose of identifying technical weaknesses that a malicious user could exploit. The program shall leverage tools and techniques a threat actor would utilize to demonstrate risks to Charter systems.
 3. *Vulnerability Mitigation.* Charter shall maintain internal policies and practices to mitigate vulnerabilities in a risk-based prioritized manner, including to rate and rank the severity of all vulnerabilities revealed as a result of scanning, vendor notifications, publication in CISA's Known Exploited Vulnerabilities catalog, and penetration testing, and take such actions as are necessary to mitigate any vulnerability that threatens Charter's ability to transmit 911 calls as soon as possible.

²⁴ Nat'l Inst. of Standards and Tech., February 2024 Cybersecurity Framework Version 2.0, <https://www.nist.gov/cyberframework> (last visited July 1, 2024).

4. *Vendor Management.* Charter shall maintain policies and practices to regularly review and assess vendor risk and, where appropriate, consider clauses in future contracts that require vendors and service providers to:
 - (a) proactively identify and disclose to Charter confirmed security vulnerabilities applicable to Charter;
 - (b) promptly notify Charter of such confirmed security vulnerabilities;
 - (c) communicate details about the vulnerability, its potential impact, and any recommended mitigation strategies; and
 - (d) complete industry standard audits like System and Organization Control (SOC) 2 assessments.
 5. *Network Segmentation.* Charter shall maintain, as practicable, policies and procedures to implement a “deny-by-default” standard for operational technology network connections, requiring explicit whitelisting with Internet protocol and port restrictions. The policies and procedures shall require that all necessary operational technology communications must traverse monitored and logged intermediary controls (e.g., firewalls, bastions, etc.), shall allow only approved asset connections, and shall minimize the risk of attacker access, even if the network is breached.
 6. *Manage Internet-Facing Services.* Charter shall maintain, as practicable, an operational technology security set of standards and procedures intended to minimize public Internet exposure and mandating additional protections (e.g., logging, multi-factor authentication, secure access) for justified exceptions, to mitigate threat actor exploitation and interruption risks. The standards and procedures shall include principles that eliminate, as practicable, exploitable services; control necessary exceptions; and disable all unnecessary operating system applications and network protocols on Internet-facing assets.
- vii. **Cybersecurity Incident Reporting.** Consistent with its current practices and in accordance with applicable laws and regulations, Charter shall review and update within sixty (60) days of the Effective Date clear and actionable policies and procedures, including to whom and how submissions are made, to provide timely cyber incident reporting to CISA and other Sector Risk Management Agencies (SRMA).²⁵ Once Charter has developed or updated such cybersecurity incident reporting policies, Charter shall notify CISA of confirmed cybersecurity incidents consistent with applicable laws and regulations governing incident reporting. In addition, Charter shall promptly notify the relevant SRMA, as determined by the nature of the incident and its potential impact.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the 911 Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company’s compliance with the 911 Rules and to implement the Operating Procedures. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

²⁵ SRMAs are government-led entities that focus on special critical infrastructure sectors and help those sectors identify, assess, and mitigate risks related to cyber threats, physical threats, and other vulnerabilities.

- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the 911 Rules and Operating Procedures. Charter's Compliance Training Program shall address, at a minimum: (i) the methods, procedures, and calculations used to identify reportable network outages; (ii) the time periods within which applicable Notifications, Initial Reports, and Final Reports must be filed with the Commission; and (iii) the potential regulatory and internal disciplinary consequences of failing to comply with the 911 Rules and Charter's Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the 911 Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

17. **Reporting Noncompliance.** The Company shall report any noncompliance with the 911 Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. If additional investigation is required by Charter, Charter may provide an updated noncompliance report within fifteen (15) calendar days after the initial report of material noncompliance. Such reports shall include a detailed explanation of: (i) each instance of such noncompliance, including the geographic area affected and the impact, if any, on 911 call transmission, NORS reporting and PSAP notification; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. Such noncompliance reports shall include an affidavit or declaration consistent with section 1.16 of the Commission's Rules.²⁶ All reports of noncompliance shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, via EB-SED-Response@fcc.gov. Each report of noncompliance filed pursuant to this paragraph 17 shall be provided to the Compliance Officer.

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

- (a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the 911 Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer: (i) has personal knowledge that the Company: (a) has established and implemented the Compliance Plan; and (b) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (ii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.

²⁶ 47 CFR § 1.16.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²⁷
- (c) If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer, as an agent of and on behalf of the Company, shall instead provide the following:
 - i. For any instance of noncompliance that the Company has not previously reported to the FCC under paragraph 17: (1) a detailed description of the noncompliance; (2) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (3) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
 - ii. For any instance of noncompliance that the Company has previously reported pursuant to paragraph 17, the Compliance Officer will include with the Compliance Report: (1) copies of those reports and (2) any material new information about the instance of noncompliance that the Company has obtained since the filing of the report; (3) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (4) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, via EB-SED-Response@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Civil Penalty.** The Company will pay a Civil Penalty to the United States Treasury in the amount of fifteen million dollars (\$15,000,000) in accordance with the following terms. Such payments shall be made in four (4) installments (each an Installment Payment). The first installment payment in the amount of three million seven hundred and fifty thousand dollars (\$3,750,000) is due within thirty (30) calendar days of the Effective Date. Thereafter, subsequent Installment Payments of three million seven hundred and fifty thousand dollars (\$3,750,000) will be due every ninety (90) days thereafter for the next two hundred seventy (270) days. The Company acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁸ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. The Company shall send electronic notification of payment to EB-SED-Response@fcc.gov on the dates that payments are made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil

²⁷ *Id.*

²⁸ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159³⁰ or printed CORES form³¹ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³² For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. **Event of Default.** The Company agrees that an Event of Default shall occur upon the failure by the Company to pay the full amount of the Civil Penalty or any Installment Payment on or before the due date specified in this Consent Decree.

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event

²⁹ 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.

³⁰ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³¹ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

³² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717, and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by the Company.

23. **Waivers.** As of the Effective Date, the Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³³ relating to the matters addressed in this Consent Decree.

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

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

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

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

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

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

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

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

³³ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Clifford S. Harris
Senior Vice President – Legal, Programming, Product & Regulatory
Charter Communications, Inc.

Date

APPENDIX A
Applicable CSRIC Best Practices

CSRIC Best Practice	Description
13-8-8090	Network Operators, Service Providers, and Equipment Suppliers should restrict dynamic port allocation protocols such as Remote Procedure Calls (RPC) and some classes of Voice-over-IP protocols (among others) from usage, especially on mission critical assets, to prevent host vulnerabilities to code execution. Dynamic port allocation protocols should not be exposed to the Internet. If used, such protocols should be protected via a dynamic port knowledgeable filtering firewall or other similar network protection methodology.
13-8-8664	Network Operators and Service Providers should block protocols meant for internal VoIP call control use at the VoIP perimeter.
13-12-8022	Network Operators, Service Providers and Public Safety should have a process by which there is a risk assessment and formal approval for all external connections. All such connections should be individually identified and restricted by controls such as strong authentication, firewalls, limited methods of connection, and fine-grained access controls (e.g., granting access to only specified parts of an application). The remote party's access should be governed by contractual controls that ensure the provider's right to monitor access, defines appropriate use of the access, and calls for adherence to best practices by the remote party. This applies to Public Safety only in an NG9-1-1 environment.
13-7-8077	Network Operators, Service Providers should use access control lists (ACLs) to restrict which machines can access the device and/or application if they do not have adequate access control capabilities. This applies to legacy systems. In order to provide granular authentication, a bastion host that logs user activities should be used to centralize access to such devices and applications, where feasible.
13-12-3275	Network Operators, Service Providers, Equipment Suppliers and Public Safety should support Border Control Functions (BCFs) that provide border firewall functionality including application and network layer protection and scanning, resource and admission control, and Denial of Service (DoS) detection and protection, as well as Session Border Control (SBC) functionality including: identification of emergency call/session and priority handling for the IP flows of emergency call/session traffic; conformance checking and mapping (if applicable) of priority marking based on policy for emergency calls/sessions; SIP protocol normalization; Network Address Translation (NAT) and Network Address and Port Translation (NAPT) Traversal; IPv4/IPv6 Interworking; Signaling Transport Protocol Support; and QoS/Priority Packet Marking.



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 24-711

Released: July 23, 2024

FCC ANNOUNCES TECHNOLOGICAL ADVISORY COUNCIL MEETING ON AUGUST 29, 2024

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,¹ the next meeting of the TAC will be held on Thursday, August 29, 2024 beginning at 10:00 am ET in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at <http://www.fcc.gov/live>. While the TAC meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance. Attendees are not required to have an appointment, but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The Technological Advisory Council (TAC) is comprised of a diverse group of leading technology experts. It provides technical expertise to the Commission to identify important areas of innovation and develop informed technology policies supporting the United States' competitiveness in the global economy. The TAC will consider and advise the Commission on topics such as 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.

Dean Brenner, a former executive at Qualcomm, serves as Chairman of the Council, representing Aira Technologies. Martin Doczkat, Chief of the Electromagnetic Compatibility Division in the Office of Engineering and Technology, serves as the Designated Federal Officer. Sean Yun, Deputy Chief of the Electromagnetic Compatibility Division in the Office of Engineering and Technology, is the Alternate Designated Federal Officer.

More information about the TAC can be found at <https://www.fcc.gov/general/technological-advisory-council>. You may also contact Martin Doczkat, Designated Federal Official (DFO) for the TAC, at Martin.Doczkat@fcc.gov or (202) 418-2435.

–FCC–

¹ 5 U.S.C. App. 2.



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DA 24-712

Released: July 23, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES UPDATE TO LIST OF COVERED EQUIPMENT AND SERVICES PURSUANT TO SECTION 2 OF THE SECURE NETWORKS ACT

WC Docket No. 18-89, ET Docket No. 21-232, EA Docket No. 21-233

Pursuant to section 2 of the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act),¹ and sections 1.50002 and 1.50003 of the Commission's rules,² the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) announces the addition of cybersecurity and anti-virus software produced or provided by Kaspersky Lab, Inc., together with all affiliates, subsidiaries, and parent companies (Kaspersky), to the list of communications equipment and services (Covered List) that have been determined to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The updated Covered List is reproduced in full in the Appendix to this Public Notice and is also found on the Bureau's website at <https://www.fcc.gov/supplychain/coveredlist>.

Consistent with section 2 of the Secure Networks Act, the Commission adopted rules in the *Supply Chain Second Report and Order* governing the publication and update of the Covered List and tasked the Bureau with publishing and maintaining the Covered List on the Commission's website.³ The Commission's rules require the Bureau to place on the Covered List any communications equipment or service if a source enumerated in the Secure Networks Act determines that the equipment or service poses an unacceptable risk to the national security of the United States,⁴ and if the communications equipment or service is capable of posing an unacceptable risk to the national security of the United States.⁵ One of the sources enumerated in the Secure Networks Act is "[a] specific determination made by the Department of Commerce pursuant to Executive Order No. 13873 . . . relating to securing the information

¹ 47 U.S.C. § 1601; *see* 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).

² 47 CFR §§ 1.50002, 1.50003; *see Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*Supply Chain Second Report and Order*).

³ *See Supply Chain Second Report and Order*, 35 FCC Rcd at 14311-25, paras. 57-92; 47 CFR §§ 1.50002 & 1.50003.

⁴ Secure Networks Act § 2(b)(1); 47 CFR § 1.50002(b)(1). The Secure Networks Act does not give the Commission discretion to make any updates to the Covered List outside of determinations made by the sources enumerated in section 2(c). *See Supply Chain Second Report and Order*, 35 FCC Rcd at 14324-25, para. 91.

⁵ Secure Networks Act § 2(b)(2); 47 CFR § 1.50002(b)(2).

and communications technology and services [(ICTS)] supply chain.”⁶ The Secure Networks Act and the Commission’s rules require the Bureau to monitor the status of determinations in order to keep the Covered List up to date.⁷ Today, we update the Covered List based on a specific determination issued by the Department of Commerce.

On June 20, 2024, the Department of Commerce issued a Final Determination that prohibits Kaspersky, and any of its successors or assignees, from engaging in ICTS transactions with U.S. persons involving cybersecurity products or services and anti-virus software designed, developed, manufactured, or supplied, in whole or part, by Kaspersky, including the integration of such software into third-party products or services.⁸ In the Final Determination, the Department of Commerce found that “Kaspersky’s provision of cybersecurity and anti-virus software to U.S. persons, including through third-party entities that integrate Kaspersky cybersecurity or anti-virus software into commercial hardware or software, poses undue and unacceptable risks to U.S. national security and to the security and safety of U.S. persons.”⁹

The Commission previously updated the Covered List in March 2022 to include the “information security products, solutions, and services” of AO Kaspersky,¹⁰ based on a Binding Operational Directive (BOD) issued by the Department of Homeland Security that required certain federal agencies to remove “Kaspersky-branded products” from federal information systems.¹¹ Consistent with Commerce’s Final Determination, our action today reflects a broader set of equipment and services produced or provided by Kaspersky, including as explained above, commercial hardware or software containing Kaspersky

⁶ Secure Networks Act § 2(c)(2); 47 CFR § 1.50002(b)(1)(ii). In 2021, pursuant to Executive Order 13873, the Department of Commerce promulgated rules governing the review of transactions involving ICTS to determine whether such transactions present national security risks. *See* 15 CFR § 7.1 *et seq.*; Executive Order 13873 of May 15, 2019, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (May 15, 2019). These rules authorize the Department of Commerce to examine transactions involving ICTS designed, developed, manufactured, or supplied by persons or entities owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. 15 CFR § 7.1. Foreign adversary is a foreign government or foreign non-government person who the Secretary of Commerce has determined to “have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.” 15 CFR § 7.4. Currently, foreign adversary is defined as including the People’s Republic of China, Cuba, Iran, North Korea, Russia, and Venezuela. *Id.* If the Department of Commerce determines that the ICTS transactions poses undue or unacceptable risks to the national security of the United States or the security and safety of United States persons, the Department of Commerce may block or restrict the transaction. 15 CFR § 7.1.

⁷ 47 U.S.C. § 1601(d)(1)-(2); 47 CFR § 1.50003(a)-(b).

⁸ Department of Commerce, Final Determination, Case No. ICTS-2021-002, Kaspersky Lab, Inc., 89 Fed. Reg. 52434 (June 24, 2024) (Final Determination), <https://www.federalregister.gov/documents/2024/06/24/2024-13532/final-determination-case-no-icts-2021-002-kaspersky-lab-inc>.

⁹ *Id.* at 52434.

¹⁰ The DHS Binding Operation Directive referred to Kaspersky as AO Kaspersky, using the formal Russian corporate nomenclature “AO” (Aktsoenernoye Obshchestvo) for Russian stock companies. *See generally* Cameron McKenna, “Business Structures in Russia,” CMS Law-Now (Aug. 25, 2004), <https://cms-lawnow.com/en/ealerts/2004/08/business-structures-in-russia>.

¹¹ *Public Safety and Homeland Security Bureau Announces Additions to the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, WC Docket No. 18-89, Public Notice (PSHSB Mar. 25, 2022) (citing and quoting National Protection and Programs Directorate, DHS, *Notification of Issuance of Binding Operational Directive 17-01 and Establishment of Procedures for Responses*, 82 Fed. Reg. 43782, 43783 (Sept. 19, 2017) (BOD), <https://www.federalregister.gov/documents/2017/09/19/2017-19838/national-protection-and-programs-directorate-notification-of-issuance-of-binding-operational>). The Bureau placed certain Kaspersky-branded products on the Covered List based on DHS’s BOD finding that such services pose an unacceptable risk to the national security of the U.S. and U.S. persons. *Id.* at 2.

cybersecurity and anti-virus software.¹²

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

For further information, please contact Zenji Nakazawa, Associate Bureau Chief, Public Safety and Homeland Security Bureau at 202-418-7949 or Zenji.Nakazawa@fcc.gov.

– FCC –

¹² Final Determination at 52437. The Binding Operational Directive explicitly “d[id] not address Kaspersky code embedded in the products of other companies.” BOD at 43783.

APPENDIX

COVERED LIST (Updated July 23, 2024)*†

Covered Equipment or Services*	Date of Inclusion on Covered List
Telecommunications equipment produced or provided by Huawei Technologies Company , including telecommunications or video surveillance services produced or provided by such entity or using such equipment.	March 12, 2021
Telecommunications equipment produced or provided by ZTE Corporation , including telecommunications or video surveillance services provided or provided by such entity or using such equipment.	March 12, 2021
Video surveillance and telecommunications equipment produced or provided by Hytera Communications Corporation , to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, including telecommunications or video surveillance services produced or provided by such entity or using such equipment.	March 12, 2021
Video surveillance and telecommunications equipment produced or provided by Hangzhou Hikvision Digital Technology Company , to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, including telecommunications or video surveillance services produced or provided by such entity or using such equipment.	March 12, 2021
Video surveillance and telecommunications equipment produced or provided by Dahua Technology Company , to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, including telecommunications or video surveillance services produced or provided by such entity or using such equipment.	March 12, 2021
Information security products, solutions, and services supplied, directly or indirectly, by AO Kaspersky Lab or any of its predecessors, successors, parents, subsidiaries, or affiliates.	March 25, 2022
International telecommunications services provided by China Mobile International USA Inc. subject to section 214 of the Communications Act of 1934.	March 25, 2022
Telecommunications services provided by China Telecom (Americas) Corp. subject to section 214 of the Communications Act of 1934.	March 25, 2022
International telecommunications services provided by Pacific Networks Corp. and its wholly-owned subsidiary ComNet (USA) LLC subject to section 214 of the Communications Act of 1934.	September 20, 2022
International telecommunications services provided by China Unicom (Americas) Operations Limited subject to section 214 of the Communications Act of 1934.	September 20, 2022
Cybersecurity and anti-virus software produced or provided by Kaspersky Lab, Inc. or any of its successors and assignees.	July 23, 2024

*The inclusion of producers or providers of equipment or services identified on this list should be read to include the subsidiaries and affiliates of such entities.

†Where equipment or services on the list are identified by category, such category should be construed to include only equipment or services capable of the functions outlined in sections 2(b)(2)(A), (B), or (C) of the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. § 1601(b)(2)(A)-(C).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: www.fcc.gov
TTY: 888-835-5322

DA 24-713
Released: July 23, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON ROD RADAR LTD. REQUEST FOR WAIVER OF SECTIONS 15.503(D) AND 15.521(D) OF THE COMMISSION'S RULES

ET Docket No. 24-222

Comment Date: August 22, 2024
Reply Comment Date: September 24, 2024

By this Public Notice, we are seeking comment on a waiver request by Rod Radar Ltd. (Rod Radar) as recently amended. Rod Radar originally filed a request for waiver of two Part 15 Commission rules in order to obtain FCC equipment authorization for its Ultra-Wideband Ground Penetrating Radar (GPR) device, the Live Dig Radar (LDR).¹ On July 2, 2024, it filed an amendment to reflect changes that it has made to the design of the LDR while continuing to seek a rule waiver under the terms of its original request.² Rod Radar claims that the LDR is the first-ever GPR integrated in an excavator digging bucket that is capable of informing bucket operators in real-time of underground utilities.³ Rod Radar suggests that its device is important for digging operations because it is designed to alert the construction excavator operator of the potential of a utility strike before it occurs. Rod Radar states that its LDR is designed to operate between 300.51 and 1103.51 MHz in 5.5 MHz steps with a frequency step duration of 58 microseconds.⁴

Rod Radar requests a waiver of Section 15.503(d) of the Commission rules to allow its LDR to be classified as a UWB device consistent with other GPR systems are permitted to operate in accordance to a waiver of this rule.⁵ Section 15.503(d) defines an Ultra-wideband transmitter as an intentional radiator that, at any point in time, has a fractional bandwidth equal to or greater than 0.20 or has a UWB bandwidth equal to or greater than 500 MHz, regardless of the fractional bandwidth.⁶ Rod Radar states

¹ Rod Radar Ltd. Request for Waiver, filed Sept 21, 2022 (Rod Radar Waiver Request).

² Rod Radar Ltd. Amendment to Request for Waiver, filed July 11, 2024 (Rod Radar Amendment).

³ Rod Radar Request at 3.

⁴ Rod Radar Request at 12. Rod Radar Amendment at 3.

⁵ See Rod Radar Request at n.12-14 (citing waivers of Section 15.503(d) previously granted to *Curtiss-Wright Controls Inc. Request for Waiver of Part 15 of the Commission's Rules Applicable to Ultra-Wideband Devices*, ET Docket No. 10-167, Order, 27 FCC Rcd 234 (OET 2012) (CWCi Waiver); *Kyma Medical Technologies Ltd., Request for Waiver of Part 15 of the Commission's Rules Applicable to Ultra-Wideband Devices*, ET Docket No. 15-119, Order, 31 FCC Rcd 9705 (OET 2016) (Kyma Waiver); *Proceq USA Inc. Request for Waiver of Part 15 of the Commission's Rules Applicable to Ultra-Wideband Devices*, DA 18-251, Order, 33 FCC Rcd 2258 (OET 2018) (Proceq Waiver); *Robert Bosch, LLC Request for Waiver of Part 15 Rules of the Commission's Rules Applicable to Ultra-Wideband Devices*, ET Docket No. 20-268, Order, 37 FCC Rcd 21 (OET 2022) (Bosch Waiver)).

⁶ 47 C.F.R. § 15.503(d).

that the rule creates uncertainty for a stepped frequency device such as the LDR because it does not identify the interval that should be considered when determining the bandwidth “at any point in time.”⁷ It further comments that its LDR steps through a total bandwidth of 803 MHz, but because each step is less than 500 MHz, the device does not meet the instantaneous bandwidth requirement of section 15.503(d) and therefore requires a waiver of this rule.⁸

Rod Radar also requests a waiver of Section 15.521(d) of the Commission’s rules consistent with the other stepped frequency device waivers we have granted in the past.⁹ Section 15.521(d) requires that radiated emission levels above 960 MHz are based on the RMS average measurement over a 1 MHz resolution bandwidth.¹⁰ This rule section also requires that “if pulse gating is employed where the transmitter is quiescent for intervals that are long compared to the nominal pulse repetition interval, measurements shall be made with the pulse train gated on. Alternate measurement procedures may be considered by the Commission.”¹¹ Rod Radar requests a waiver of this rule to allow the RMS measurements to be performed with the stepping function active, i.e. in the device’s normal mode of operation.¹² Rod Radar states that the Commission has previously acknowledged that the UWB rules do not address stepped frequency transmitters and has waived the rule and allowed measurement to take place under the normal transmission mode for other stepped frequency devices.¹³ Without a waiver of this requirement, the measurements would be concentrated in a smaller portion of the spectrum, and therefore, emissions would need to be reduced to achieve compliance with the Commission’s rules.

We seek comment on Rod Radar’s request. To develop a complete record on the issues presented by this request, the proceeding will be treated, for *ex parte* purposes, as a “permit-but-disclose” proceeding in accordance with Section 1.1200(a) of the Commission’s rules, subject to the requirements under Section 1.1206(b). Rod Radar filed its petition electronically as a non-docketed proceeding in the Commission’s Electronic Comment Filing System.¹⁴ We have opened a new docket, **ET Docket 24-222** to facilitate consideration of this request and have moved Rod Radar’s submission into this docket. Parties should file all comments and reply comments in **ET Docket 24-222**.

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).

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

⁷ Rod Radar Request at 9.

⁸ Rod Radar Request at 9.

⁹ Rod Radar Waiver Request at n. 30 (citing previously granted section 15.521(d) waiver orders).

¹⁰ 47 C.F.R. § 15.521(d).

¹¹ *Id.*

¹² Rod Radar Waiver Request at 10.

¹³ *Id.* (citing *Petition for Waiver of the Part 15 UWB Regulations Filed by the Multi-band OFDM Alliance Special Interest Group*, ET Docket No. 04-352, Order, 20 FCC Rcd 5528 (2005) (MBOA-SIG Waiver); *Massachusetts Institute of Technology Request for Waiver of Part 15 of the Commission’s Rules Applicable to Ultra-Wideband Devices*, ET Docket No. 19-89, Order, 35 FCC Rcd 4389 (OET 2020) (MIT Waiver); Kyma Waiver; Proceq Waiver).

¹⁴ Rod Radar filed in INBOX-PART15 (Petition for Waiver of Part 15), which is our preferred intake for waivers of the Part 15 rules.

- *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 courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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.

Parties should also send a copy of their filings to Aole Wilkins EI, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, NE, Washington DC 20554, or by e-mail to aole.wilkinsel@fcc.gov.

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

By the Chief, Office of Engineering and Technology

-FCC-



PUBLIC NOTICE

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DA 24-714

Released: July 23, 2024

FCC ANNOUNCES NEXT MEETING OF THE TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES ON AUGUST 14, 2024

GN Docket No. 19-329

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,¹ the Federal Communications Commission (FCC or Commission) announces the next meeting of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Precision Ag Connectivity Task Force or Task Force). The meeting will be held **Wednesday, August 14, 2024, beginning at 10:00 a.m. EDT**. Notice of this meeting was published in the Federal Register.²

At this meeting, the Task Force and Working Group Leadership will provide updates on the progress of their respective reports; begin to discuss Executive Summary details; review and discuss program and policy expectations relevant to the Task Force's duties; and continue to discuss strategies to advance broadband deployment on agricultural land and promote precision agriculture. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

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

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

Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19-329.

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

² Federal Communications Commission, Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 89 Fed. Reg. 57893 (July 16, 2024).

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

- FCC -



PUBLIC NOTICE

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DA 24-715
July 24, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 37 (SOUTH CAROLINA) 700 MHZ AND 800 MHZ REGIONAL PLANNING
COMMITTEES TO HOLD MEETINGS

PS Docket No. 23-237 and WT Docket 02-378

The Region 37 (South Carolina)¹ Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Wednesday, October 23, 2024. 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
- Elections-Chair and Vice-Chair
- 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
- Elections-Chair and Vice-Chair
- 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 -

In the Matter of)
)
North Carolina State Highway Patrol) File No. 0010444325
)

allowing NCSHP Emergency Responders the ability to communicate while on emergency incident scenes.”⁵ On August 28, 2023, the Public Safety and Homeland Security Bureau (PSHSB) issued a *Public Notice* seeking comment on NCSHP’s waiver request.⁶

5. On September 7, 2023, the Enterprise Wireless Alliance (EWA) filed comments in response to the *Public Notice*.⁷ In its comments, EWA states that it does not object to grant of the waiver and fully supports use of available 800 MHz channels by all qualified applicants.⁸ EWA states, however, that as long as applicants must demonstrate there are no Public Safety frequencies available for its use, it will review the accompanying certifications as to the lack of assignable Public Safety channels to confirm that it agrees with the findings.⁹ It claims that, in this case, it identified several National Public Safety Planning Advisory Committee (NPSPAC) channels and two Business/Industrial/Land Transportation (B/ILT) channels that appeared available under FCC Rule Section 90.621 that defines co-channel and adjacent channel protection criteria.¹⁰

6. EWA concedes that verifying the availability of individual NPSPAC channels is difficult, but states that when it contacted APCO about the B/ILT channels, it was advised that they were rejected by the NCSHP because they did not meet its combiner spacing criteria.¹¹ EWA contends that the B/ILT channels it identified are sufficiently geographically separated for NCSHP’s use and assumes that these channels do not meet NCSHP’s combiner specifications.¹²

7. EWA states while PSHSB may accept technical considerations as justification for a waiver, the Wireless Telecommunications Bureau (WTB) does not. EWA notes that WTB rejected a waiver request from Florida Power & Light (FPL) for use of a Public Safety channel, with concurrence from a Public Safety coordinator, because the available B/ILT and General Category channels did not “meet its technical specifications (*i.e.*, ERP and antenna height).”¹³ EWA indicates that the Notice of Return stated that FCC Rule Section 90.621(e) “does not provide for exceptions due to equipment and/or technical limitations.”¹⁴

8. On September 27, 2023 APCO filed reply comments.¹⁵ APCO confirms that it stands by its certification of NCHSP’s application related to the request for waiver to use the two SMR frequency pairs.¹⁶ APCO states that at the time of initial certification, no B/ILT channels were available, but subsequently, B/ILT channels became available, and at the Commission’s request, APCO evaluated the suitability of these channels as an alternative to the requested SMR channels.¹⁷ APCO claims that the

⁵ Waiver Request at 1.

⁶ See *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*, Public Notice, DA 23-766, rel. Aug 28, 2023 (PSHSB).

⁷ See Comments of the Enterprise Wireless Alliance, filed Sep. 7, 2023 (EWA Comments).

⁸ EWA Comments at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* citing EWA Inter-Category Sharing Certification, File No. 0009969013 and Notice of Return, Reference Number: 7225002; File No. 0009969013.

¹⁵ See Reply Comments of APCO International, filed Sep. 27, 2023 (APCO Reply Comments).

¹⁶ *Id.*

¹⁷ *Id.*

newly available B/ILT channels did not meet the applicant's technical requirements and attached a letter from the applicant providing additional information regarding the unsuitability of the B/ILT channels.¹⁸

9. Specifically, NCSHP states the B/ILT channels are unsuitable because they are separated by less than 150KHz from its existing system frequencies. NCSHP states that "[t]he 7/800 MHz 6 channel combiners we utilize throughout our system are specified from the manufacturer as having a minimum frequency separation of 150 KHz. During in service field tests anything less than this separation has led to degradation on any adjacent channel(s) that were previously in service without issue(s)."¹⁹ This degradation, NCSHP states, can cause channels to go out of service which is not an option for sites that carry life safety traffic.²⁰

III. DISCUSSION

10. 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;²¹ 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.²² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²³ As detailed below, we conclude NCSHP's request for wavier of Section 90.17(d) may be granted under our waiver standard.

11. *NCSHP's Waiver Serves the Public Interest.* Section 90.617(d) of the Commission's Rules lists the channels available for SMR applicants. Section 90.617(d) specifically states that the channels listed in that subsection are available only to applicants in the SMR category. The waiver of the Commission's eligibility criteria sought by NCSHP would enable it to use SMR spectrum to supplement and enhance "limited coverage" areas of Surry County.²⁴ Based on the record before us, we conclude that a waiver designed to facilitate improved public safety communications would serve the public interest. When the Commission adopted section 90.617(d) of the rules, it sought to avoid a potential scarcity of radio frequencies for Private Land Mobile Radio Services (PLMRS) use by stopping the then prevailing practice of incorporating Business and I/LT channels into SMR systems.²⁵ However, in the instant case, interservice category sharing does not impinge on PLMRS frequencies since NCSHP will be using channels assigned for SMR operations. As such, the proposed interservice sharing does not undermine the underlying purpose of the prohibition.

12. In addition, we find NCSHP has no reasonable alternative to deploying these frequencies to strengthen its public safety system. In reaching our conclusion, we find particularly persuasive its statement that due to the lack of Public Safety Spectrum and proximity of several other 800 MHz users, it

¹⁸ *Id.* See also Letter, dated Sep. 25, 2023, from Technical Services Unit, North Carolina Department of Public Safety, State Highway Patrol to Federal Communications Commission (attached to APCO Reply Comments) (Technical Supplement).

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 CFR § 1.925(b)(3)(i).

²² 47 CFR § 1.925(b)(3)(ii).

²³ *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).

²⁴ Waiver Request at 1.

²⁵ *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, 11 FCC Rcd 1463, 1537 para. 141 (1995).

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.²⁶ We note that no incumbent SMR licensee objected to NCSHP's applications or waiver request.

13. We find it unduly burdensome for NCSHP's 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 these SMR frequencies are available for use and capable of meeting its capacity needs. Therefore, we grant NCSHP's request for waiver of section 90.617(d) and allow it to use 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.

14. *EWA Comments.* We find EWA's comments unfounded. As an initial matter, EWA conflates the standard for granting inter-category sharing requests under Section 90.621(e) of the rules, with the criteria for granting a waiver under Section 1.925 of the rules. Section 90.621(e) of the Commission's rules governing inter-category sharing states in pertinent part that B/ILT Pool channels will be available for inter-category sharing if no frequencies are available for licensing to an applicant in its own pool category.²⁷ To that end, an applicant must include with its application a statement from its frequency coordinator certifying to the lack of available in-pool channels.²⁸ Furthermore, applicants seeking to license B/ILT Pool channels through inter-category sharing are required to obtain coordination from a frequency coordinator eligible to coordinate channels from the B/ILT Pool.²⁹ As discussed above, NCSHP is not seeking inter-category sharing, but instead is seeking a waiver of the eligibility rules set forth in section 90.617(d) and thus need only satisfy the requirements set forth in section 1.925 of the rules.³⁰

15. Second, EWA's reliance on the FPL application is misplaced. The FPL application EWA claims WTB rejected did not request a waiver. Rather, the FPL application included only an inter-category sharing request pursuant to 90.621(e).³¹ WTB evaluated the FPL application according to the inter-category sharing rules, and returned the FPL application because Section 90.621(e) does not permit inter-category sharing in situations where there are in-pool channels available. In addition, as WTB stated, Section 90.621(e) provides no exception for applicants that are unable to use those available channels because of equipment or technical limitations.³²

16. In the instant case, the application of Section 90.621(e) is not appropriate because the rule, in pertinent part, applies only to public safety licensees seeking to license B/ILT frequencies via inter-category sharing, for which they would be eligible without a waiver. NCSHP, however is seeking a waiver of the eligibility requirements set out in Section 90.617(d). Absent such a waiver, NCSHP would not be eligible to apply for an authorization on these frequencies.

²⁶ Waiver Request.

²⁷ 47 CFR § 90.621(e)(1).

²⁸ 47 CFR § 90.621(e)(5).

²⁹ *Id.*

³⁰ 47 CFR § 1.925.

³¹ See File No. 0009969013, where the waiver question is answered "no," there are no attachments that specify a waiver request in either type or description, and there is no mention of a waiver request or an associated justification in the body of any attachments.

³² 47 CFR § 90.621(e). See also, Notice of Return, Reference Number: 7225002 citing compliance with rule. In any event, FPL removed its request out-of-pool channels when it modified its application in response to WTB's return letter. This rendered the inter-category sharing request moot and WTB subsequently granted FPL a license under WROT354.

IV. ORDERING CLAUSES

17. 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 90.617 of the Commission's rules, 47 CFR §§ 1.925, 90.617, that the request for waiver filed by North Carolina State Highway Patrol filed March 6, 2023 in connection with application File No. 0010444325 IS GRANTED, and the application SHALL BE PROCESSED consistent with this Order and the Commission's rules.

18. 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

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

In re Application of	)	
	)	
Carolina University	)	Facility ID No. 200391
	)	NAL/Acct. No. MB-202441410011
For Renewal of License for	)	FRN: 0024472748
FM Translator Station W234CZ	)	File No. 0000239124
Chattanooga, Tennessee	)	

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

Adopted: July 24, 2024

Released: July 24, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the Application¹ of Carolina University (Licensee) for renewal of its license for FM Translator Station W234CZ, Chattanooga, Tennessee (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully violated section 73.3539³ of the Commission's rules (Rules) by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated section 301 of the Act,⁴ by engaging in unauthorized operation of the Station after its authorization expired. Based upon our review of the facts and the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500).

II. BACKGROUND

2. Section 73.7539(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."⁵ An application for the renewal of the Station's license should have been filed by April 1, 2020, the first day of the fourth full calendar month prior to the Station's August 1, 2020, license expiration date.⁶ No such application was filed by the April 1, 2020,

¹ Application File No. 0000239124 (filed Feb. 16, 2024) (Application).

² 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 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 Commission's rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3539.

⁴ See 47 U.S.C. § 301.

⁵ 47 CFR § 73.3539(a).

⁶ See 47 CFR §§ 73.1020, 73.3539(a).

deadline, and the Station's license expired on August 1, 2020.⁷

3. Licensee later filed the Application on February 16, 2024. Licensee explains that it intended to file the renewal application for the Station with the renewal applications for its two other stations, which were timely filed, but failed to do so.⁸ Licensee states that it discovered that the Station's renewal application was not filed with the renewal application for its two other stations after being notified by Bureau staff working on a pending transfer of control application.⁹ The Licensee, therefore, requests a waiver of the renewal filing deadline.¹⁰ Licensee did not request special temporary authority (STA) to operate the Station following the expiration of the Station's license.

III. DISCUSSION

4. *Proposed Forfeiture.* In this case, Licensee has failed to file a timely license renewal application for the Station as required by section 73.3539(a) of the Rules. The Application was not received until February 16, 2024, several years after the Station's license expired.¹¹ Moreover, it continued operating the Station after the license expired on August 1, 2020, without requesting STA, in violation of section 301 of the Act.

5. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the section 503(b) context.¹⁵ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission

⁷ Because of a Bureau staff error, the Public Notice announcing license expirations for stations in Tennessee failed to include the Station. See *Radio License Expirations*, Public Notice, 35 FCC Rcd 7007 (MB 2020).

⁸ Application, Attach., "Carolina U - W234CZ Renewal App Exhibit.PDF". See Application File Nos. 0000091087 and 0000106050 (license renewal applications for WDTN(AM), Rossville, Georgia, and W235AO, Chattanooga, Tennessee, respectively).

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Bureau's processing policies include promptly notifying stations that have failed to file their renewal applications, and issuing a notice of apparent liability if the renewal has not been filed within 30 days of the original due date. *Atlantic City Board of Education*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384 n.30 (2016) (*Atlantic City MO&O*). Additionally, the Bureau considers an expired license still in effect until it issues a letter or public notice cancelling that license, and a licensee may file a renewal application within 30 days of the Bureau issuing such a letter or public notice. In this case, the Bureau did not issue a letter or public notice cancelling the Station's license and therefore Licensee's filing well after the Station's license expired was permissible. See *Gerald Parks*, Letter Order, 38 FCC Rcd 1084, 1089 (MB 2023) (explaining Bureau policy for handling renewal applications that are filed after a station's license has expired).

¹² 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ 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).

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.”¹⁶

6. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁷ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁸ 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.”¹⁹

7. In this case, Licensee seeks a waiver of the filing deadline because it mistakenly believed that the renewal application for the Station was filed with the timely filed renewal applications for its other two stations. The Commission has held that in the case of late-filed license renewal applications, the Bureau may waive section 73.3539(a) for the limited purpose of accepting and acting on the station's license renewal application, and issue a notice of apparent liability for the violation of section 73.3539(a).²⁰ Thus, we will grant Licensee's waiver request to the extent necessary to accept the untimely Application. However, we find that issuing a notice of apparent liability is still appropriate here. The Commission has held that violations resulting from inadvertent error or oversight are willful violations,²¹ and such circumstances do not merit waiver of the renewal filing deadline. Licensee was ultimately responsible for ensuring that it complied with the Rules by filing a timely renewal application. It did not do so. Moreover, Licensee continued operating the Station after the license expired on August 1, 2020, and never filed for STA to operate the Station after its license expired.

8. Based on our review of the facts and circumstances, we tentatively find that a \$13,000 forfeiture is appropriate. Licensee failed to file a timely license renewal application for the Station, continued operating the Station after the license expired on August 1, 2020, for a period spanning over 3 and a half years, and has continued to operate the Station without authority because it has never filed for STA to operate the Station after its license expired. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application, and for the full \$10,000 base amount

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ 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); 47 CFR § 1.80(b)(11), note to paragraph (b)(11), Section I.

¹⁸ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁹ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

²⁰ *Bible Broad. Network, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 2259, 2261, para. 8 (MB 2011) (applicant's inadvertent failure to timely file its renewal application is not a special circumstance warranting waiver of the renewal filing deadline). *Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7437, paras. 13-15 (2004) (“de facto” waiver granted to accept untimely license renewal application and licensee sanctioned for untimely filing); see also *Atlantic City MO&O*, 31 FCC Rcd at 9385 n.32 (a waiver request is not necessary for the Bureau to act on an untimely filed license renewal application).

²¹ *Whidbey Island Center for the Arts, Forfeiture Order*, 25 FCC Rcd 8204 (MB 2010) (*Whidbey Island Forfeiture Order*) (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (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”); *WDKA Acquisition Corp.*, Forfeiture Order, 28 FCC Rcd 16398, 16400, para. 8 (MB 2013).

for the Station's extended periods of unauthorized operation.²² Accordingly, we tentatively find that, considering the record as a whole, a \$13,000 forfeiture is appropriate for the violations in this case. However, we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely license renewal application and to \$5,000 for unauthorized operations, for a total of \$6,500, because, as a translator, the Station is providing a secondary service.²³

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that Carolina University, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for its apparent willful violation of section 73.3539 of the Commission's rules and its apparent willful and repeated violation of section 301 of the Communications Act of 1934, as amended.

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, Carolina University, **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),²⁴ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Carolina University must send notice that payment has been made to Alexander.Sanjenis@fcc.gov and Shante.Willis@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 27000001. A completed FCC 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

²² See *Pinebrook Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Red 11976, 11979, para 9 (MB 2016) (proposing forfeiture of \$13,000 for failure to timely file license renewal application and unauthorized operations of six years after license expired).

²³ See *SCLC Jacksonville Florida*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Red 13279, 13281, para. 6 (MB 2021) (reducing proposed forfeiture by half for failure to file a timely renewal application and for unauthorized operations for an LPFM station because it provides a secondary service)

²⁴ Payments made using CORES 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 | 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. 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, 47 CFR §§ 1.16 and 1.80(g)(3). The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, Alexander Sanjenis and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to Alexander.Sanjenis@fcc.gov and Shante.Willis@fcc.gov to assist in processing the response.**

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁷
 - 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.

13. 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

²⁷ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

result.²⁸

14. 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 Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service in the manner specified above. A copy of the request must also be sent to **Alexander.Sanjenis@fcc.gov** and **Shante.Willis@fcc.gov**. 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. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Carolina University, 420 S. Broad Street, Winston-Salem, NC 27101. A copy will also be sent to Licensee's counsel, Sara L. Hinkle, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁸ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

²⁹ See 47 CFR § 1.1914.

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

In re Application of	)	
	)	
Marion R. Williams	)	Facility ID No. 201046
	)	NAL/Acct. No. MB-202441410012
For Renewal of License for	)	FRN: 0004999876
FM Translator Station W288DU	)	File No. 0000243075
Canton, Mississippi	)	

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

Adopted: July 24, 2024

Released: July 24, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the Application¹ of Marion R. Williams (Licensee) for renewal of its license for FM Translator Station W288DU, Canton, Mississippi (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully violated section 73.3539³ of the Commission's rules (Rules) by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated section 301 of the Act,⁴ by engaging in unauthorized operation of the Station after its authorization expired. Based upon our review of the facts and the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500).

II. BACKGROUND

2. Section 73.7539(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."⁵ An application for the renewal of the Station's license should have been filed by February 3, 2020, the first day of the fourth full calendar month prior to the Station's June 1, 2020, license expiration date.⁶ No such application was filed by the February 3,

¹ Application File No. 0000243075 (filed Apr. 4, 2024) (Application).

² 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 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 Commission's rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3539.

⁴ See 47 U.S.C. § 301.

⁵ 47 CFR § 73.3539(a).

⁶ See 47 CFR §§ 73.1020, 73.3539(a).

2020, deadline,⁷ and the Station's license expired on June 1, 2020.⁸ Licensee later filed the Application on April 4, 2024. Licensee did not provide an explanation for its late filed renewal application and did not otherwise request special temporary authority (STA) to operate the Station following the expiration of the Station's license.⁹

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, Licensee has failed to file a timely license renewal application for the Station as required by section 73.3539(a) of the Rules. The Application was not received until April 4, 2024, several years after the Station's license expired.¹⁰ Moreover, it continued operating the Station after the license expired on June 1, 2020, without requesting STA for extended periods of operation, in violation of section 301 of the Act.

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹² The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹³ and the Commission has so interpreted the term in the section 503(b) context.¹⁴ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission

⁷ Licensee had previously filed a license renewal application for the Station on December 17, 2019, as well as for commonly owned primary station WONG(AM), Canton, Mississippi. Application File Nos. 0000092047, 0000092048. Licensee's counsel requested Bureau staff to dismiss that renewal applications, stating that he "inadvertently prepared and filed" the applications earlier than the February 3, 2020, filing deadline. See E-mail from Allan G. Moskowitz, Esq., Counsel for Marion R. Williams, to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau (Dec. 17, 2019, 15:35 EST). At Licensee's request, those license renewal applications were dismissed on December 17, 2019. Licensee subsequently filed a new renewal application for WONG(AM) but failed to either include the Station in that application or file a separate application for the Station. Application File No. 0000100898.

⁸ Because of a Bureau staff error, the Public Notice announcing license expirations for stations in Mississippi failed to include the Station. See *Radio License Expirations*, Public Notice, 35 FCC Rcd 4784 (MB 2020).

⁹ On June 9, 2021, Licensee requested Special Temporary Authority (STA) for the Station to remain silent, stating that the Station went silent on June 8, 2021, because its transmitter caught on fire. Application File No. BLSTA-20210609AAB (filed June 9, 2021, granted July 14, 2021). The Station resumed operations on November 2, 2021. Notice of Resumption of Operations (filed Nov. 3, 2021).

¹⁰ The Bureau's processing policies include promptly notifying stations that have failed to file their renewal applications, and issuing a notice of apparent liability if the renewal has not been filed within 30 days of the original due date. *Atlantic City Board of Education*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384 n.30 (2016). Additionally, the Bureau considers an expired license still in effect until it issues a letter or public notice cancelling that license, and a licensee may file a renewal application within 30 days of the Bureau issuing such a letter or public notice. In this case, the Bureau did not issue a letter or public notice cancelling the Station's license and therefore Licensee's filing well after the Station's license expired was permissible. See *Gerald Parks*, Letter Order, 38 FCC Rcd 1084, 1089 (MB 2023) (explaining Bureau policy for handling renewal applications that are filed after a station's license has expired).

¹¹ 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁵

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁶ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁷ 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.”¹⁸

6. Based on our review of the facts and circumstances, we tentatively find that a \$13,000 forfeiture is appropriate. Licensee failed to file a timely license renewal application for the Station, continued operating the Station after the license expired on June 1, 2020, and only filed for STA to cover its operation between June 8, 2021, when it went silent for technical issues, and November 2, 2021, when it resumed operations. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application, and for the full \$10,000 base amount for the Station's extended periods of unauthorized operation.¹⁹ Accordingly, we tentatively find that, considering the record as a whole, a \$13,000 forfeiture is appropriate for the violations in this case. However, we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely license renewal application and to \$5,000 for unauthorized operations, for a total of \$6,500, because, as a translator, the Station is providing a secondary service.²⁰

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that Marion R. Williams, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for its apparent willful violation of section 73.3539 of the Commission's rules and its apparent willful and repeated violation of section 301 of the Communications Act of 1934, as amended.

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, Marion R. Williams, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House)

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ 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); 47 CFR § 1.80(b)(11), note to paragraph (b)(11), Section I.

¹⁷ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁸ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

¹⁹ See *Pinebrook Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 11976, 11979, para 9 (MB 2016) (proposing forfeiture of \$13,000 for failure to timely file license renewal application and unauthorized operations of six years after license expired).

²⁰ See *SCLC Jacksonville Florida*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 13279, 13281, para. 6 (MB 2021) (reducing proposed forfeiture by half for failure to file a timely renewal application and for unauthorized operations for an LPFM station because it provides a secondary service)

debit from a bank account using CORES (the Commission's online payment system),²¹ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Marion R. Williams must send notice that payment has been made to Alexander.Sanjenis@fcc.gov and Shante.Willis@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:²²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed FCC 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).²³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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.

10. 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, 47 CFR §§ 1.16 and 1.80(g)(3). The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, Alexander Sanjenis and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to Alexander.Sanjenis@fcc.gov and Shante.Willis@fcc.gov to assist in processing the response.**

²¹ Payments made using CORES do not require the submission of an FCC Form 159.

²² 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.

²³ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁴
 - 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.

11. 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.²⁵

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 20554.²⁶ Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service in the manner specified above. A copy of the request must also be sent to **Alexander.Sanjenis@fcc.gov** and **Shante.Willis@fcc.gov**. 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. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Marion R. Williams, 2338 Central Drive, Gary, IN 46407. A copy will also be sent to Licensee's counsel, Allan G Moskowitz, Esq., 10845 Tuckahoe Way, North Potomac, MD 20878.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁴ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

²⁵ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

²⁶ See 47 CFR § 1.1914.



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 24-719
Released: July 25, 2024

**ENFORCEMENT BUREAU AND WIRELINE COMPETITION BUREAU ANNOUNCE
LAUNCH OF RAPID BROADBAND ASSESSMENT TEAM TO SPEED RESOLUTION OF
BROADBAND-RELATED POLE ATTACHMENT DISPUTES**

WC Docket No. 17-84

Effective today, parties may begin requesting the assistance of a new intra-agency rapid response team—the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of pole attachment disputes that impede or delay broadband deployment.¹ Today’s launch of the RBAT, including a new landing page and a dedicated form allowing parties to submit information about their dispute, will further the FCC’s ongoing efforts to promote timely, nationwide broadband deployment.

In December 2023, the FCC established the RBAT in an effort to make the pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating broadband deployment.² The RBAT is an intra-agency team comprised of Enforcement Bureau and Wireline Competition Bureau staff with expertise in the FCC’s pole attachment rules and orders under 47 U.S.C. § 224. The RBAT is charged with prioritizing and expediting the resolution of pole attachment disputes that are impeding or delaying the deployment of broadband facilities and providing coordinated review and assessment of those disputes. The RBAT will swiftly engage stakeholders, gather essential information, and distill issues in dispute. It will then provide guidance and advice to parties on the most effective means of resolving their dispute including, but not limited to, RBAT-supervised mediation. The RBAT also may decide if a complaint (or portion of a complaint) is suitable for placement on the FCC’s Accelerated Docket based on consideration of specified criteria.

Parties seeking to request RBAT review and assessment of a pole attachment dispute that is impeding or delaying deployment of broadband facilities should first contact the Chief of the Enforcement Bureau’s Market Disputes Resolution Division by phone (202.418.7330) and in writing (EBMDRD.Division@fcc.gov). The MDRD Chief will direct the party to instructions for completing and submitting FCC Form 5653 - Request for RBAT Review and Assessment. To facilitate access to the FCC Form 5653 and other relevant information, the Enforcement Bureau has created an RBAT Review and Assessment landing page that is available at [Rapid Broadband Assessment Team Review and Assessment](#).

Further questions regarding today’s announcement can be directed by phone to 202.418.7330 or by email to EBMDRD.Division@fcc.gov.

¹ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Final Rule, Announcement of Effective Date, 89 Fed. Reg. 60317 (July 25, 2024).

² See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109 (rel. Dec. 15, 2023); 47 CFR § 1.1415.

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 24-112
Table of Allotments, Television Broadcast	)	RM-11981
Stations (Jacksonville, Florida)	)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 24, 2024**Released: July 24, 2024**

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 Multimedia Holdings Corporation (Petitioner or Multimedia), the licensee of WTLV (Station or WTLV), channel 13, Jacksonville, Florida (Jacksonville).² The Petitioner has requested the substitution of UHF channel 33 for VHF channel 13 in the Table of TV Allotments.³ TEGNA Inc., on behalf of its wholly owned subsidiary, Multimedia, filed comments in support of the Petition, as required by the Commission's rules (rules), reaffirming Multimedia's commitment to apply for channel 33 and, if authorized, to promptly implement the facilities modifications necessary for the Station to operate on channel 33.⁴ No other comments were received.

2. We conclude that the public interest would be served by substituting channel 33 for channel 13 at Jacksonville. According to the Petitioner, the Station has received persistent reception complaints from viewers, many of whom state that they can receive signals from other local stations on UHF channels, but not WTLV on VHF channel 13.⁵ The Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances,⁶ and that although VHF reception issues are not universal, "environmental noise blockages affecting [VHF] signal strength and reception exist" and "[vary] widely from service area to service area."⁷ Additionally, the Petitioner notes that the Commission has observed the large variability in the performance of indoor antennas available to consumers, with most antennas receiving "fairly well at UHF and . . . not so well to very poor at high-VHF."⁸

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Jacksonville, Florida)*, MB Docket No. 24-112, Notice of Proposed Rulemaking, DA 24-358 (MB Apr. 16, 2024) (*NPRM*).

² Petition of Multimedia Holdings Corporation for Rulemaking (filed Jan. 19, 2024, amended Jan. 30, 2024), on file at LMS File No. 0000235765 (Petition).

³ 47 CFR § 73.622(j).

⁴ 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009). *See* Comments of TEGNA Inc. at 2 (filed May 20, 2024). We will continue to refer to the Petitioner as "Multimedia" in this *Report and Order*.

⁵ *NPRM* at para. 2 and n.3.

⁶ *Id.* at para. 2.

⁷ *Id.*

⁸ *Id.*

3. WTLV is an NBC network affiliate and while an analysis provided by the Petitioner indicates that the Station's move to channel 33 will result in 274,303 persons no longer being located within the Station's noise limited service contour (NLSC),⁹ all but 16,737 persons in the predicted loss area are within the NLSC of three other NBC affiliated TV stations.¹⁰ Further, when the Commission's *TVStudy* software is run for the Station's licensed and proposed facility with the "Study Area Mode" set to "unrestricted" to predict coverage outside the proposed channel 33 NLSC,¹¹ all viewers in the remaining predicted loss area would continue to receive over-the-air NBC network programming from WTLV on channel 33. Thus, once service provided by other NBC stations and the terrain-limited coverage predictions are taken into account, we find that the proposed channel 33 facility will result in no loss of NBC service to existing viewers within the Station's current NLSC.¹²

4. We also find that the proposal complies with all relevant technical requirements for amendment of the Table of TV Allotments, including the interference protection requirements of section 73.622(a) of the rules, and further demonstrates that the proposed channel 33 facility will provide full principal community coverage to Jacksonville as required by section 73.618 of the rules.¹³ In fact, this

⁹ See 47 CFR § 73.619 (defining the noise limited service contour (NLSC) of full power television stations and the method of computation) (formerly §§ 73.625(b) and 73.683(c)). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations, the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (MB Mar. 4, 2024); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

¹⁰ *NPRM* at para. 3. These stations are WSAV-TV, Savannah, Georgia; WNBW-DT, Gainesville, Florida; and WESH, Daytona Beach, Florida. The Petitioner used V-Soft Probe-5, Version 5.40a, and the staff confirmed the Petitioner's results using the Commission's *TVStudy* software, which is available with no charge to the public. *Id.* at n.9. Further, many viewers in the service loss area are likely already relying upon these stations for their NBC service; for example, some of the loss population is in Gainesville, Florida, which has its own NBC affiliate, WNBW-DT. In previous channel substitution rulemaking proceedings, the Bureau has considered, on a case-by-case basis, the loss area from stations affiliated with the same network when evaluating viewer loss. See, e.g., *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Schenectady, New York)*, MB Docket No. 21-127, Report and Order, 36 FCC Rcd 9849, 9850, para. 3 (MB 2021) ("Petitioner submitted an analysis, using the Commission's *TVStudy* software analysis program, demonstrating that after taking into account service provided by other CBS stations, all of the population located within WRGB's original post-DTV transition channel 6 noise limited contour will continue to receive CBS service, except for 30 people.").

¹¹ In previous channel substitution rulemaking proceedings, the Bureau has taken into account, on a case-by-case basis, terrain-limited coverage populations when evaluating predicted service loss. See *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Odessa, Texas)*, MB Docket No. 22-435, Report and Order, 38 FCC Rcd 1350, 1350, para. 2 (MB 2023). Because reception of a station's signal does not stop at the edge of a station's NLSC, particularly where there is excessively flat terrain such as in the area of Florida covered by WTLV, viewers that will no longer be within WTLV's channel 33 NLSC will still be able to receive the Station's signal. *NPRM* at para. 3, n.10. Although following the channel substitution we predict 16,737 person will not be within WTLV's or another NBC affiliate's NLSC, because of the propagation and reception issues associated with high-VHF channels, some of these viewers may not be able to receive WTLV today. See *supra* para. 2.

¹² *NPRM* at paras. 3-4.

¹³ See 47 CFR §§ 73.622(a) and 73.618 (formerly §§ 73.616(a) and 73.623(a), and 73.625(a), respectively); see also *supra* n.9. We give no weight to the Petitioner's argument that substituting UHF channel 33 for VHF channel 13 would improve the Station's ability to offer ATSC 3.0 service over-the-air. The Bureau has repeatedly refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of deployment and the availability of consumer devices remains limited. See *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23- (continued....)

channel substitution from VHF to UHF will help improve service to existing viewers, including those in the Station's principal community of license, by eliminating reception issues related to the Station's current operation on a high-VHF channel.

5. As proposed, channel 33 can be substituted for channel 13 at Jacksonville in compliance with the principal community coverage requirements of section 73.618(a) of the rules,¹⁴ at coordinates 30-16'-25" N. and 81-33'-12" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the rules with the following specifications:¹⁵

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Jacksonville, Florida	33	1000	290.4	1,465,674

6. 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.¹⁶ An expedited effective date is necessary in this case to ensure that WTLV can operate with improved service to its viewers as quickly as possible.

7. 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 TV 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>
Jacksonville, Florida	*9, 14, 18, 19, 20, *21, 33

8. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Multimedia Holdings Corporation shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 33.

9. **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.

10. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 24-112 and RM-11981 **SHALL BE TERMINATED** and its docket closed.

990 (MB Oct. 18, 2023); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order, 38 FCC Rcd 6077 (MB 2023).

¹⁴ 47 CFR § 73.618(a).

¹⁵ 47 CFR §§ 73.622(a) (formerly §§ 73.616 and 73.623). *See supra* n.9 and *Part 73 Amendment R&O* at para. 40.

¹⁶ 5 U.S.C. § 553(d)(3).

11. For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, at Joyce.Bernstein@fcc.gov; or Mark Colombo, Video Division, Media Bureau, at Mark.Colombo@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

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

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

DA 24-721

Released: July 25, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC DOMINANT CARRIER TELECOMMUNICATIONS SERVICES AS PART OF A TECHNOLOGY TRANSITION

WC Docket No(s). 24-170

Comments Due: August 26, 2024

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 23, 2024**, the 60th day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application,

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f)(1) (stating, in relevant part, that an application filed by a dominant carrier "shall be automatically granted on the 60th day... unless the Commission has notified the applicant that the grant will not be automatically effective."). See also 47 CFR § 63.71(f)(2)(i) (stating that "[a]n application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted... if: The applicant provides affected customers with the notice required under paragraph (a)(6) of this section, and the application contains the showing or certification described in § 63.602(b)").

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **August 26, 2024**.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 paper copies must file an original and one copy of each filing. Such filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

⁵ Comments are normally due 30 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 47 CFR § 1.1200 *et seq.*

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.

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).

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): Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions (altafiber)

WC Docket No. 24-170, Comp. Pol. File No. 1920

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-170%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-170%22)))

Affected Service(s) – legacy voice service

Service Area(s) – Yorktowne Community in Sharonville, Ohio

Authorized Date(s) – on or after September 28, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: On July 23, 2024, altafiber filed a supplemental letter to clarify certain details regarding the proposed discontinuance and to indicate that corrected notices were mailed to customers on July 15, 2024.



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 24-722

Released: July 25, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS PUBLIC SAFETY LICENSEES WITH MULTIPLE LICENSES TO UPDATE CONTACT INFORMATION WITH AN EMAIL ADDRESS

WT Docket 19-212

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB or the Bureau) reminds part 90 and part 101 public safety licensees to update their license contact information with an email address. To promote customer service to public safety licensees, and as a supplement to the current courtesy email process, the Bureau will send a reminder email to licensees associated with multiple licenses to update this vital piece of information for each of their licenses. Licensees without valid or updated email addresses will not receive courtesy electronic reminders regarding license expiration or construction deadlines.¹ Failure to timely file renewal applications and construction notifications may lead to license cancellation, regardless of whether the licensee has received a courtesy reminder.²

Background. In 2020, the Federal Communications Commission (Commission) issued rules to finalize the transition to electronic interactions for licenses in the Wireless Radio Services.³ In particular, the Commission eliminated the mailing of paper courtesy reminder notices and other Universal Licensing System (ULS) correspondence to licensees and adopted rules mandating electronic delivery for all ULS compulsory and courtesy correspondence.⁴ On June 29, 2021, electronic filing for all Wireless Radio Service applications began.⁵ On January 20, 2022, the Bureau encouraged licensees without a valid email address to update their email address in ULS and reminded licensees to file timely renewal applications and construction notifications.⁶

Outreach. Currently, the Bureau emails public safety licensees on an individual license basis. To supplement that process, the Bureau will email current licensees with multiple licenses or associated licenses a courtesy reminder to update all licenses with an email address. In addition, the Bureau encourages

¹ *Electronic Filing Report and Order* at 10793, para. 42; *Reminder: Electronic Filing Required For All Wireless Radio Service Applications Beginning June 29, 2021*, WT Docket No. 19-212, Public Notice, 36 FCC Rcd 9472, 9473 (WTB/PSHSB 2021) (2021 Reminder Notice).

² *Electronic Filing Report and Order* at 10793, para. 42; 47 CFR § 1.955(a)(1)-(2).

³ *Completing the Transition to Electronic Filing, Licenses and Authorizations, and Correspondence in the Wireless Radio Services*, WT Docket No. 19-212, Report and Order, 35 FCC Rcd 10781 (2020) (*Electronic Filing Report and Order*).

⁴ *Id.* at 10793, para. 43; *see also* 47 CFR § 1.47. Notices sent to email addresses on file with the Commission will be deemed to have been served. 47 CFR §§ 1.5(a), 1.923(i).

⁵ 2021 Reminder Notice, 36 FCC Rcd 9472.

⁶ *Reminder: Electronic Filing Required For All Wireless Radio Service Applications Beginning June 29, 2021*, WT Docket No. 19-212, Public Notice, 37 FCC Rcd 424 (WTB/PSHSB 2022) (2022 Reminder Notice).

licensees to use an email address associated with an agency title in lieu of a personal email, as job duties and personnel changes can lead to outdated or invalid email addresses.

Licensees Without A Valid Email Address. For licenses without a valid or updated email address, the Bureau reminds such licensees that they will not receive courtesy electronic reminders regarding license expiration or construction deadlines.⁷ This is important because failure to timely file renewal applications and construction notifications may lead to license cancellation, regardless of whether the licensee has received a courtesy reminder.⁸

How to Update License with Email Address. Licensees can find instructions on how to file free administrative updates directly in ULS at: <https://www.fcc.gov/wireless/support/universal-licensing-system-uls-resources/updating-administrative-information>. Additional filing instructions in ULS on renewals and construction notifications can be found in Public Notice DA 22-65 at <https://docs.fcc.gov/public/attachments/DA-22-65A1.pdf>. Licensees may also contact a FCC public safety coordinator at <https://www.fcc.gov/general/public-safety-frequency-coordinators> that will be able to update your administrative information or renew a license for a fee.

For assistance filing your application(s) electronically, please submit a help request at <https://www.fcc.gov/wireless/available-support-services> or call the FCC Licensing Support Center at (877) 480-3201, the hours of operation are 8:00 AM- 6:00 PM ET, Monday to Friday. Interested Parties who have questions concerning this *Public Notice* may contact Tracy Simmons of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, (717) 338-2657, Tracy.Simmons@fcc.gov.

Action by the Chief, Public Safety and Homeland Security Bureau.

-FCC-

⁷ *Electronic Filing Report and Order* at 10793, para. 42; *2021 Reminder Notice*, 36 FCC Rcd at 9473.

⁸ *Electronic Filing Report and Order* at 10793, para. 42; 47 CFR § 1.955(a)(1)-(2).



Federal Communications Commission
Washington, D.C. 20554

July 25, 2024

DA 24-723

In Reply Refer to:

1800B3-ARR

Released: July 25, 2024

Holy Mother Mary
c/o Dennis J. Kelly, Esq.
30628 Detroit Road, Box 278
Westlake, OH 44145

Re: **Holy Mother Mary**
New LPFM, Cascade, Iowa
Facility ID No. 786456
Application File No. 0000232660

Petition for Reconsideration

Dear Applicant:

We have before us a Petition for Reconsideration (Petition)¹ filed by Holy Mother Mary (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Cascade, Iowa.² We also have before us a Supplement to the Petition.³ For the reasons set forth below, we grant the Petition, reinstate the Application, dismiss the Supplement, and afford Petitioner 30 days in which to file a curative amendment.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.⁴ On January 23, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)⁵ of the Commission's rules (Rules), with respect to the co-channel vacant allotment on Channel 254A in Asbury, Iowa. The staff also noted that an amendment was not permitted under section 73.870(c) of the Rules.⁶

¹ Pleading File No. 0000239730 (filed Feb. 23, 2024).

² Application File No. 0000232660 (filed Dec. 13, 2023).

³ See Pleading File No. 0000239833 (filed Feb. 26, 2024). The Supplement is an amendment to modify the proposed station's Channel from Channel 254 to Channel 228.

⁴ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

⁵ See 47 CFR § 73.807(a).

⁶ See *Broadcast Actions*, Public Notice, Report No. PN-2-240125-01 (MB Jan. 25, 2024) (citing 47 CFR § 73.870(c)) (*Dismissal Public Notice*).

In the Petition, Petitioner argues that: 1) section 73.870(c) does not prohibit a curative amendment where the application is dismissed due to a short-spacing to a vacant FM channel allotment, since section 73.870(c) refers only to “all applications and facilities in existence” as of the date of the *Procedures Public Notice*;⁷ 2) determining vacant FM allotments presents a technical challenge because they are not shown in the Commission’s Licensing Management System (LMS) database;⁸ 3) the Commission, in a previous case, dismissed and subsequently reinstated an LPFM application after determining that the dismissal resulted from an area of unsettled law;⁹ and 4) the public interest is served by the reinstatement of the Application, and past Commission precedent supports permitting Petitioner to file a curative amendment.¹⁰

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original determination, or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.¹¹ Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application. However, we agree that section 73.870(c) does not apply to violations of the minimum distance spacing requirements regarding co-channel vacant FM allotments, and therefore does not prohibit amendment of the Application.

Section 73.807 Violation. Section 73.807(a) provides that LPFM applicants must protect, *inter alia*, vacant FM allotments, by meeting the minimum distance separation requirements specified in that section of the Rules.¹² The Bureau, therefore, correctly dismissed the Application because the Application failed to meet the minimum distance spacing requirements of section 73.807(a)(1), with respect to the co-channel vacant FM allotment on Channel 254A in Asbury, Iowa (Asbury Allotment), which was designated as an available vacant FM allotment before Petitioner filed the Application.¹³

We reject Petitioner’s arguments that identifying vacant FM allotments is difficult or that LMS does not reflect vacant FM allotments. Petitioner offers no evidence to support its argument that vacant FM allotments were excluded from the LMS data available during the 2023 LPFM Filing Window. Additionally, the Bureau staff has confirmed within LMS that it correctly reflected the Asbury Allotment as a vacant FM allotment both before and during the 2023 LPFM Filing Window. Accordingly, we reject Petitioner’s argument that LMS does not reflect vacant FM allotments, and Petitioner offers no evidence to support a claim that vacant FM allotments were excluded during the filing window.

Curative Amendment Request. We agree with Petitioner that section 73.870(c) does not apply in this situation and therefore afford Petitioner an opportunity to file a curative amendment. Section 73.870(c) provides that any application submitted during an LPFM filing window that fails to meet the minimum distance separation requirements of section 73.807, with respect to “all applications and facilities” in existence, will be dismissed without opportunity to amend.¹⁴ We recognize that the Bureau stated in the *Procedures Public Notice* that LPFM applicants must comply with section 73.807(a), or

⁷ Petition at 1-3.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4 (citing *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 16071 (2014)).

¹⁰ *Id.* at 5-6 (citing *Clear Communications, Inc.*, Letter Order, 36 FCC Rcd 12500 (MB 2021)).

¹¹ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹² *Id.*

¹³ *Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations. (Various Locations)*, 37 FCC Rcd 1216 (MB 2022).

¹⁴ See *id.* § 73.870(c).

applications would be dismissed without opportunity to amend pursuant to section 73.870(c),¹⁵ however, the language of section 73.870(c) only applies to violations related to *applications and facilities* in existence as of the date of the *Procedures Public Notice*. We find that a vacant FM allotment is neither an application nor a facility. Accordingly, because the Application failed to meet the minimum distance spacing requirements for a vacant FM allotment, rather than for applications or authorized facilities, we find that section 73.870(c) does not bar a curative amendment opportunity.

Accordingly, we grant Petitioner's request to file a curative amendment pursuant to the Commission's *Nunc Pro Tunc Policy*. Under the *Nunc Pro Tunc Policy*, the Commission will grant "reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days."¹⁶ However, we will not consider the amendment contained in the Supplement,¹⁷ and we further note that the change from Channel 254 to Channel 228 proposed in the Supplement would be a prohibited major amendment.¹⁸ We thus dismiss the Supplement, but afford Petitioner 30 days from the issuance of this letter to file a rule-compliant amendment. If such amendment is not filed within 30 days, we will dismiss the Application by Public Notice.

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Holy Mother Mary, on February 23, 2024 (Pleading File No. 0000239730) **IS GRANTED** and the Supplement to the Petition for Reconsideration filed by Holy Mother Mary, on February 26, 2024 (Pleading File No. 0000239833) **IS DISMISSED**.

IT IS FURTHER ORDERED that the Application filed by Holy Mother Mary on December 13, 2023 (Pleading File No. 0000232660), **IS REINSTATED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ See *Procedures Public Notice* at 3.

¹⁶ *Statement of Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, 49 Fed. Reg. 47331-01 (Dec. 3, 1984) (*Nunc Pro Tunc Policy*).

¹⁷ Although Petitioner states that it filed the amendment through the Supplement at the suggestion of the staff, filing amendments through pleadings to circumvent filing restrictions is not permitted. See *RENEW Taylorsville*, Letter Order, DA 24-289 at 3 (MB Mar. 26, 2024) (rejecting amendment to dismissed application that was filed as a Supplement where it was a prohibited attempted to circumvent section 73.870(c)).

¹⁸ See *Media Bureau Provides Guidance on the Processing of Schedule 318 Applications Filed in the LPFM Window*, Public Notice, DA 24-92, 3 (MB Feb. 1, 2024) ("all pending LPFM applicants may only file "minor" amendments, which include . . . channel changes of no more than +/- three channels or to an intermediate frequency (+/- 53 or 54) channel"); *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the December 2023, LPFM Window; Opens Window to Accept Settlements and Technical Amendments*, DA 24-256, 3 (MB Mar. 15, 2024).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 24-724

Released: July 25, 2024

URBAN RATE SURVEY 2025 TIMELINE

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 2025.¹ The information collected in this survey will be used to develop voice and broadband reasonable comparability benchmarks that will be in place in 2025.

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 2023 data filed in the FCC Broadband Data Collection (BDC). 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 will be sent via email to each selected provider's BDC contact person and certifying official on or about **July 25, 2024**. The survey consists of an online reporting form, which will be accessible only to the selected providers. The email notification will contain detailed information on how to access and complete the survey online and how to obtain technical assistance. Completed surveys will be due no later than **August 30, 2024**.

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, 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).



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. 24-725

Friday July 26, 2024

Report No. SAT-01841

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-20240612-00129	E S2423	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/25/2024

Nature of Service: Fixed Satellite Service

On July 25, 2024, the Satellite Programs and Policy Division granted special temporary authority, with conditions, to Intelsat License LLC, for an additional period of 180 days, to operate its Horizons 2 satellite at the 73.8° W.L. orbital location with a new bias of 0.65° east, 0.4° south and to operate one of its beams with a revised coverage area. Horizons 2 operates in the fixed-satellite-service in the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20240712-00152	E S3143	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/23/2024

Nature of Service: Fixed Satellite Service

On July 23, 2024, the Satellite Programs and Policy Division granted special temporary authority, with conditions, to Intelsat License LLC, for an additional period of 60 days, to operate the Galaxy 35 space station at the 93.1° W.L. orbital location.

INFORMATIVE

SAT-MOD-20240510-00099	S2935	O3b Limited

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 July 26, 2024. 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 24-726

Released: July 26, 2024

SPACE BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU CLARIFY FILING PROCEDURES FOR RECENT PUBLIC NOTICE

**GN Docket No. 23-135; ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-
20240322-00061**

Comments/Objections/Petitions Due: August 12, 2024

Response to Comments/Objections/Oppositions to Petitions Due: August 22, 2024

Replies to Responses/Oppositions Due: August 27, 2024

The Space Bureau and Wireless Telecommunications Bureau issued a Public Notice in April 2023, seeking comment on filings by Space Explorations Holdings, LLC (SpaceX) and T-Mobile USA Inc. (T-Mobile).¹ On July 12, 2024, the Space Bureau issued a Public Notice (July 12 Public Notice) seeking comment on SpaceX's amendment to those filings, as well as SpaceX's request to modify a separate license, which was posted in GN Docket No. 23-135 on July 16, 2024.²

In this Public Notice, the Space Bureau and Wireless Telecommunications Bureau clarify the filing procedures for the July 12 Public Notice. Parties wishing to file documents in response to the July 12 Public Notice regarding the SpaceX applications with ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061 should use the Commission's Electronic Comment Filing System (ECFS) and the International Communications Filing System (ICFS), referring to GN Docket No. 23-135 and ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061, by the deadlines identified above. Comments regarding ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061 must be filed in accordance with section 25.154 of the Commission's rules.³

All filings in response to the other file numbers identified in the July 12 Public Notice should be made as indicated in the July 12 Public Notice, referring to section 25.154 of the Commission's rules, unless otherwise noted.⁴

¹ *Space Bureau and Wireless Telecommunications Bureau Seek Comment on Filings of SpaceX and T-Mobile Requesting to Establish Supplemental Coverage from Space; Space Exploration Holdings, LLC Application Accepted for Filing*, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021, Public Notice, DA 23-338 (WTB/SB Apr. 28, 2023).

² *Satellite Licensing Division and Satellite Programs and Policy Division Information Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01836 (SB Jul 12, 2024) (July 12 Public Notice), available at <https://www.fcc.gov/document/space-station-applications-accepted-filing-29>.

³ For assistance submitting a filing in ICFS, please contact ICFSINFO@fcc.gov.

⁴ See July 12 Public Notice at 1; 47 CFR § 25.154.

Filing Requirements. For comments filed using ECFS or by filing paper copies:⁵

- 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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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).

Ex Parte Rules. These proceedings, GN 23-135 and ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061, 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 section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); 63 FR 24121 (1998).

⁶ See 47 CFR § 1.1200 *et seq.*

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

For further information regarding this proceeding, please contact Stephanie Neville of the Space Bureau, at stephanie.neville@fcc.gov or Alice Koethe of the Mobility Division, Wireless Telecommunications Bureau, at alice.koethe@fcc.gov.

- FCC -



Federal Communications Commission
Washington, D.C. 20554

July 26, 2024

DA 24-727
In Reply Refer to:
1800B3-ATS
Released: July 26, 2024

Divine Mercy Educational Radio
c/o Mike Panther
606 Crescent Lane
Fort Madison, IA 52627
(sent by electronic mail)

Mr. Albert Adam David
2632 Kenilworth Ave.
Berwyn, IL 60402
(sent by electronic mail)

In re: **Divine Mercy Educational Radio**
New LPFM, Fort Madison, Iowa
Facility ID No. 784138
Application File No. 0000231459

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Divine Mercy Educational Radio (Divine Mercy) for a construction permit for a new low power FM (LPFM) station at Fort Madison, Iowa.¹ We also have before us an Informal Objection to the Application (Objection) and a Supplement to the Objection (Supplement), both filed by Albert Adam David (David).² For the reasons set forth below, we deny the Objection and grant the Application.

Background. Divine Mercy filed the Application during the 2023 LPFM Filing Window.³ The Application is accompanied by a Technical Narrative, which states that Divine Mercy is the current licensee of KDME-LP, Fort Madison, Iowa,⁴ that the Application is proposing a major modification of the

¹ Application File No. 0000231459 (filed Dec. 6, 2023).

² Pleading File Nos. 0000238102 (filed Feb. 2, 2024), 0000239412 (filed Feb. 17, 2024).

³ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

⁴ See Application File No. BLL-20080902ABH (granted Sep. 26, 2008).

existing facility, and that Divine Mercy will surrender the license of KDME-LP prior to commencing operations of the new LPFM station.⁵

In the Objection, David argues that the Application should be dismissed on the basis of section 73.3513(a)(3) of the Commission's rules (Rules).⁶ David notes that the Application is signed by Michael E Panther (Panther), who is identified as a "General Manager," but is not identified as an officer of Divine Mercy in the Parties to the Application section of the Application.⁷ David, however, also notes that Panther is identified as an officer of Divine Mercy Educational Radio Association, Inc.⁸ on the Iowa Secretary of State's website and signed KDME-LP's most recent license renewal application.⁹ Therefore, David argues that if the Application omitted parties to the application, it should be dismissed and, alternatively, if Panther is not an officer of Divine Mercy, he is not eligible to sign the Application, and the Application should be dismissed on this basis.¹⁰ Finally, the Objection also asserts that although the Application includes a copy of the license of KDME-LP, the Application did not include a pledge to divest the station.¹¹

Divine Mercy did not file an Opposition to the Objection. On February 13, 2024, Divine Mercy filed an amendment to the Application¹² "to complete the Parties to the Application that were omitted in error."¹³ The Amendment identifies Panther as President of Divine Mercy in the Parties to the Application section, and changes Panther's title in the signature field to President.¹⁴

In the Supplement, David, *inter alia*, reiterates that the Application does not include a pledge to divest KDME-LP¹⁵ and argues that section 73.855 of the Rules prohibits a party holding an attributable interest in more than one LPFM authorization unless it is a Tribal applicant or proposes a public safety purpose.¹⁶

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁷ petitions to deny and informal objections must provide properly supported allegations of fact that, if true,

⁵ Application at Attach. "Technical Exhibit.doc" (Technical Exhibit).

⁶ Objection at 1-2 (citing 47 CFR § 73.3513(a)(3) (Signature Rule); *Procedures Public Notice* at 7).

⁷ Objection at 1. *See also* Application at Certification (signed by Michael E. Panther).

⁸ Although the applicant name in the Application is listed as "Divine Mercy Educational Radio," the Application provides a copy of Divine Mercy's Certificate of Incorporation, which specifies "Divine Mercy Educational Radio Association, Inc.". Application at "Incorporation.doc" (Certificate). Although the Objection suggests they are two separate entities, the Technical Exhibit and Certificate eliminate any ambiguity, and we will consider them the same entity.

⁹ Objection at 1; *see also* Application File No. 0000124426 (granted Oct. 9, 2020).

¹⁰ Objection at 1-2.

¹¹ *Id.* at 2; *see also* Application at "Ownership Statement.doc".

¹² Application, Amendment (filed Feb. 13, 2024) (Amendment).

¹³ Amendment at Attach. "Amendment Reason.pdf".

¹⁴ Amendment at Parties to the Application Section and Certification (filed Feb. 13, 2024) (Amendment).

¹⁵ Supplement at 1-2.

¹⁶ *Id.* (citing 47 CFR § 73.855).

¹⁷ 47 U.S.C. § 309(d).

would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁸

Major Modification and Divestiture Pledge. The *Procedures Public Notice* explained that a licensee, such as Divine Mercy, seeking a major modification to an existing LPFM station should apply for a new station, note in its application that it is seeking a major modification to an existing station, and include a statement indicating that it will surrender its current license before commencement of operations of the new station.¹⁹ The Application adhered to these procedures and requirements. Specifically, the Technical Exhibit, which David neglects to consider, explains the purpose of the application and includes the required divestiture pledge.²⁰ The Application, therefore, does not, as David alleges, violate the section 73.855 ownership limits.

Signature Rule. The Signature Rule requires that an application filed by a corporation—such as Divine Mercy—must be signed by an officer.²¹ Here, the Application was signed by Mike Panther, who was not identified as an officer of Divine Mercy in the original Application. However, as David notes, the Iowa Secretary of State website shows that as of May 11, 2023, Mike Panther was a director of Divine Mercy.²² We have previously held that a director of a nonprofit entity may serve as the signatory of an application.²³ Thus, the Application was in compliance with the Signature Rule at the time it was filed, and we deny the Objection.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Albert Adam David on February 2, 2024 (Pleading File No. 00002382102), **IS DENIED**.

¹⁸ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencor, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁹ *Procedures Public Notice* at 4.

²⁰ See Technical Exhibit.

²¹ See 47 CFR § 73.3513(a)(3); see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991), and *Central Florida Communications Group, Inc.*, Hearing Designation Order, 6 FCC Rcd 522, 523, para. 3 (MMB 1991).

²² Supplement at 3; see also Business Entities Search, <https://sos.iowa.gov/search/business/search.aspx> (last visited July 22, 2024). Although Panther was not identified as an officer or director of Divine Mercy in the original Application, the Iowa Secretary of State website independently confirms that he was a director at the time the Application was filed. Further, Divine Mercy amended the Application to identify Panther as the President and David cites no authority that the Application cannot be amended to correct the initial omission.

²³ *New Bohemia Group, Inc.*, Letter Order, 24 FCC Rcd 1357, 1358-59 (MB 2009) (application signed by director of corporation, rather than an officer, complies with the Signature Rule).

IT IS FURTHER ORDERED that the application of Divine Mercy Educational Radio for a construction permit for a new low power FM station at Fort Madison, Iowa (Application File No. 0000231459) **IS GRANTED, PROVIDED THAT** Divine Mercy Educational Radio must surrender or otherwise divest itself of its license for Station KDME-LP, Fort Madison, Iowa (Facility Id. 133439) prior to commencement of operations of the new LPFM station.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-728

Released: July 26, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES EFFECTIVE DATE FOR POLE ATTACHMENT ACCESS RULES

WC Docket No. 17-84

On December 13, 2023, the Commission adopted the *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking*.¹ In the *Fourth Report and Order*, the Commission adopted rules (1) establishing the Rapid Broadband Assessment Team (RBAT), an intra-agency rapid response team charged with prioritizing and expediting the resolution of pole attachment disputes that impede or delay broadband deployment, and (2) providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband builds.² The Commission stated that these rule changes may contain new or modified information collection requirements and would not become effective until the Office of Management and Budget (OMB) completed its review of any information collection requirements that the Wireline Competition Bureau (Bureau) determined is required under the Paperwork Reduction Act.³ The Commission also directed the Bureau to announce the effective date for the rules by subsequent Public Notice.⁴

On July 2, 2024, OMB approved, for a period of three years, the information collection requirements related to the pole attachment rules contained in the *Fourth Report and Order*. Pursuant to the announcement of effective date subsequently published in the Federal Register, the effective date for section 1.1411(c)(4) and new section 1.1415 of the Commission's rules is July 25, 2024.⁵

For further information regarding the pole attachment rules, contact Michael Ray, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0357 or Michael.Ray@fcc.gov.

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109 (December 15, 2023) (*2023 Infrastructure Item*).

² *Id.* at 2-24, paras. 2-38.

³ *Id.* at 38, para. 71 (stating that “the Fourth Report and Order shall become effective 30 days after publication in the Federal Register, except that the amendments to section 1.1411(c)(4) and new section 1.1415, 47 CFR §§ 1.1411(c)(4), 1.1415, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for section 1.1411(c)(4) and new section 1.1415 by subsequent Public Notice.”). The Fourth Report and Order was published in the Federal Register on January 12, 2024. 89 Fed. Reg. 2151 (Jan. 12, 2024).

⁴ *2023 Infrastructure Item* at 38, para. 71.

⁵ 89 Fed. Reg. 60317 (July 25, 2024) (citing 47 CFR §§ 1.1411(c)(4) and 1.1415).



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 24-729

Released: July 29, 2024

COMMENT SOUGHT ON APPLICATION OF BOND COMMUNICATIONS, INC, FOR CERTIFICATION TO PROVIDE VIDEO RELAY SERVICE

CG Docket Nos. 03-123 and 10-51

Comments Due: August 28, 2024

Reply Comments Due: September 12, 2024

The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on the application filed by Bond Communications, Inc. (Bond), for certification to provide Video Relay Service (VRS) supported by the Interstate Telecommunications Relay Service (TRS) Fund.¹

Filing Requirements. Interested parties may file comments on or before the dates indicated above.² All filings must reference CG Docket Nos. 03-123 and 10-51. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).³

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Office of the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD, 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

¹ Application of Bond Communications, Inc, for Certification to Provide Video Relay Service, CG Docket Nos. 03-123, 10-51 (filed May 29, 2024), <https://www.fcc.gov/ecfs/document/10529075858473/1>.

² See 47 CFR §§ 1.1, 1.49.

³ *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Ex Parte Rules. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by 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).⁵ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

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 Bureau at 202-418-0530 (voice).

Additional Information. For further information regarding this Notice, please contact Joshua Mendelsohn, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-559-7304 or Joshua.Mendelsohn@fcc.gov.

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⁴ 47 CFR §§ 1.1200 *et seq.*

⁵ *Id.* § 1.1206(b).



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 24-730
Released: July 29, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF REASNOR TELEPHONE COMPANY, LLC FROM GS IOWA VENTURES, LLC TO INTEGRATED PATH COMMUNICATIONS, LLC

WC Docket No. 24-164

By this Public Notice, the Wireline Competition Bureau grants an application filed by GS Iowa Ventures, LLC (GS Iowa Ventures), Reasnor Telephone Company, LLC (Reasnor), and Integrated Path Communications, LLC (Integrated Path) (together, 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 domestic 214 authorization holder Reasnor from GS Iowa Ventures to Integrated Path.²

On June 27, 2024, the Bureau released a public notice seeking comment on the Application.³ We did not receive comments or petitions in opposition to the Application.

Reasnor, a Nebraska limited liability company and rural incumbent local exchange carrier (LEC), provides local exchange services to customers located in the Reasnor, Iowa telephone exchange.⁴ The Reasnor exchange includes the following communities in Iowa: Kellogg, Killduff, Galesburg, Lynnville, Searsboro, and Sully.⁵ Reasnor, a designated Eligible Telecommunications Carrier (ETC), receives high-cost universal service support through the Enhanced Alternative Connect America Cost Model support mechanism.⁶ Reasnor is 100% owned by GS Iowa Ventures, a holding

¹ See 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

² Application for Consent to Transfer Control of Reasnor Telephone Company, LLC from GS Iowa Ventures, LLC to Integrated Path Communications, LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-164 (filed May 28, 2024) (Application). Applicants filed a supplement to the application on June 25, 2024. Supplement to Application for Consent to Transfer Control of Reasnor Telephone Company, LLC from GS Iowa Ventures, LLC to Integrated Path Communications, LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-164 (filed June 25, 2024) (Supplement). Applicants also filed an application for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Reasnor Telephone Company, LLC from GS Iowa Ventures, LLC to Integrated Path Communications, LLC*, WC Docket No. 24-164, Public Notice, DA 24-615 (WCB 2024).

⁴ Application at 2.

⁵ *Id.*

company that does not provide telecommunications services, which in turn is 100% owned by Thrift Communications, LLC (Thrift Communications), a holding company that does not offer telecommunications services.⁷ Thrift Communications is 100% owned by Sue Harvison, a United States citizen.⁸

Integrated Path, a New York limited liability company, provides resold local exchange services as a competitive LEC and offers voice services utilizing VoIP technologies in New York, Vermont, Florida, Texas, Wisconsin, Oregon, California, Iowa, Kentucky, New Hampshire, Missouri, Montana, and West Virginia.⁹ Integrated Path has an ETC designation in the states of New York, Texas, and Wisconsin.¹⁰ Integrated Path is wholly owned and operated by Brian Shepard, a U.S. citizen.¹¹ Brian Shepard is also the 100% owner of the following telecommunications service providers, affiliates of Integrated Path through common ownership: Bluebird Communications, LLC, a New York limited liability company providing competitive local exchange services in the States of New York, New Jersey, and South Dakota; Right Call LLC, a Delaware limited liability company and an Administrative Operating Company Number, which has been granted access to update Telecom Routing Administration databases, specifically the Business Input Routing and Rating Database System, and holds CMRS licenses in California, Florida, Illinois, New York, Texas, and Vermont; and AXO Communications LLC, a Delaware limited liability company and competitive LEC providing resold and local and interstate exchange services in New York and Iowa.¹² Other than what is disclosed in the Application, neither Integrated Path nor any of its affiliates hold a ten percent (10%) or greater direct or indirect ownership of any other provider of domestic regulated telecommunications services.¹³

Pursuant to the terms of the proposed transaction, Integrated Path, GS Iowa Ventures, and Reasnor entered into a Membership Interest Purchase Agreement under which Integrated Path agreed to purchase from GS Iowa Ventures 100% of the equity interest in Reasnor.¹⁴ Applicants state, after consummation of the proposed transaction, Reasnor will become a wholly-owned subsidiary of Integrated Path.¹⁵ Applicants also state that no assignment of licenses, certificates of public convenience, assets, or customers will occur as a consequence of the proposed transaction.¹⁶ Applicants assert that the proposed transaction will not trigger any change in the rate, terms, and conditions under which Reasnor provides service to existing customers.¹⁷ Applicants explain that there

⁶ *Id.* at 12-13. Reasnor also participates in the Lifeline program and will continue to participate in that program post-consummation of the transaction. *Id.* at 14.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Supplement at 1.

¹⁴ Application at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

will be no change in service provider as a result of the transaction.¹⁸ Finally, Applicants state there is no overlap in the service territories of Integrated Path, its affiliates, and Reasnor.¹⁹

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

For further information, please contact Megan Danner, Wireline Competition Bureau, Competition Policy Division, at megan.danner@fcc.gov.

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¹⁸ *Id.*

¹⁹ Supplement at 1.

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of	)	MB Docket No. 24-224
Allotments, Television Broadcast Stations	)	RM-11988
(Lubbock, Texas)	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 29, 2024

Released: July 29, 2024

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 Joint Petition for Rulemaking filed May 21, 2024, by Gray Television Licensee, LLC (Gray), the licensee of KCBT, Lubbock, Texas (KCBT), which is operating on channel 11 but previously held a construction permit for channel 36,¹ and SagamoreHill of Lubbock, LLC (SagamoreHill), the licensee of KJTV-TV, channel 35, Lubbock, Texas (KJTV-TV).² As discussed below, Gray and SagamoreHill request that the Bureau amend the Table of TV Allotments to permit the stations to “swap” channels and authorize KCBT to operate on channel 35 and KJTV-TV to operate on channel 11. Accordingly, we seek comment on substituting channel 11 for channel 35 and channel 35 for channel 36 at Lubbock, Texas (Lubbock).³

II. BACKGROUND

2. In 2021, at Gray’s request, the Bureau amended the Table of TV Allotments to substitute UHF channel 36 for VHF channel 11 at Lubbock.⁴ Accordingly, channel 11 is no longer allotted to Lubbock in the Table of TV Allotments.⁵ Gray requested and was granted a construction permit to modify KCBT’s facility to operate on channel 36 at Lubbock,⁶ using the existing broadband antenna

¹ LMS File No. 0000149814 (granted June 14, 2021).

² Joint Petition for Rulemaking (filed May 21, 2024), LMS File No. 0000245119 (Joint Petition). The parties are referred to collectively as the “Joint Petitioners.” Gray and SagamoreHill state that they are parties to a Shared Services Agreement whereby Gray provides certain operational services to KJTV-TV. Joint Petition at n.2.

³ We note that the Joint Petitioners request that the Commission authorize the filing of major modification applications to implement their “proposed channel swap.” *Id.* at 4. This is not the correct procedure for implementing the requested changes. When the Commission substitutes channels in the Table of TV Allotments through a rulemaking proceeding, the change is implemented through the petitioning station filing a minor modification application after the new channel is allotted, and subsequently following the normal procedures for licensing such modifications by filing an application for license to cover. See 47 CFR § 73.3572(a); see also *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Lubbock, Texas)*, MB Docket No. 21-61, Report and Order, 36 FCC Red 7536 (MB 2021) (*Channel 36 R&O*). The Joint Petitioners will be expected to follow such established procedures if the dual channel substitutions are authorized.

⁴ *Channel 36 R&O*.

⁵ 47 CFR § 73.622(j).

⁶ See *supra* n.1.

currently used by KJTV-TV that is mounted on a tower located 5.5 kilometers from the licensed KCBD channel 11 site.⁷ Gray did not construct the facility.⁸ The Joint Petitioners now propose to “swap” the licensed channels and equipment for KCBD (channel 11) and KJTV-TV (channel 35).⁹ In order to effectuate this proposal, the Bureau must: (1) amend the Table of TV Allotments to substitute channel 11 at Lubbock for channel 35 and (2) amend the Table of TV Allotments to substitute channel 35 at Lubbock for channel 36.¹⁰ Upon grant of the proposed channel substitutions, the Joint Petitioners must simultaneously implement their proposed channel substitutions.¹¹

3. According to the Joint Petitioners, this proposal will serve the public interest because it will allow SagamoreHill to replace KJTV-TV’s failing equipment with the equipment currently used by KCBD on channel 11.¹² Specifically, Joint Petitioners state that KJTV-TV’s tube transmitter is failing, that replacement parts for tube transmitters are not available, and that the cost for SagamoreHill to replace the transmitter for KJTV-TV’s 1000 kW facility is prohibitively expensive. KCBD’s channel 11 equipment, however, “is in good operating condition.”¹³ According to the Joint Petitioners, because Gray had planned to invest in a new 1000 kW transmitter for KCBD on channel 36, it will be able to use the new transmitter to instead replace the failing channel 35 transmitter and operate KCBD on channel 35.¹⁴ In turn, Gray will provide SagamoreHill with its channel 11 equipment (i.e., antenna, transmitter, etc.) that it had planned to decommission following its move to channel 36.

4. With regard to the proposed channel substitutions, according to the Engineering Statement submitted with the Joint Petition, there would be no predicted loss area on channel 35 when compared to KCBD’s previously-authorized channel 36 facility. There would in fact be a small gain of 191 persons.¹⁵ Further, the proposed channel 11 facility for KJTV-TV encompasses its currently licensed channel 35 facility, and thus would also not result in any viewer loss. In fact, moving KJTV-TV from channel 35 to channel 11 would provide additional service to approximately 8,000 persons.¹⁶

III. DISCUSSION

5. We believe that Joint Petitioners’ proposal warrants consideration. We believe channel 11 can be substituted for channel 35 at Lubbock, as proposed, in compliance with the principal

⁷ Joint Petition, Engineering Statement at 1.

⁸ Joint Petition at 1-2. Because the channel 36 facility was not constructed, the construction permit expired on June 14, 2024, and has been forfeited. See 47 CFR § 73.3598(e) (“Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”). The Joint Petition was filed prior to expiration of the construction permit, and as such, to the extent necessary, we find that it remains valid in order for us to evaluate and act upon the requested channel substitutions.

⁹ Joint Petition at 1-2.

¹⁰ See *supra* n.3.

¹¹ We propose to condition any minor modification to require the Joint Petitioners to coordinate implementation of the channel substitutions proposed herein.

¹² Joint Petition at 3.

¹³ *Id.* at 3-4.

¹⁴ See *id.* We note that comparing KCBD’s proposed channel 35 facility to its licensed channel 11 operation, the loss is approximately 350 persons, consistent with the *de minimis* value previously approved in KCBD’s prior channel substitution to channel 36. See *Channel 36 R&O*, 36 FCC Rcd at 7536, para. 2 and Joint Petition, Engineering Statement at 4.

¹⁵ Joint Petition, Engineering Statement at 3.

¹⁶ Joint Petition at 4, Engineering Statement at 5.

community coverage requirements of section 73.618(a) of the Commission's rules (Rules),¹⁷ at coordinates 33°-32'-29.9" N. and 101°-50'-13.6" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the Rules.¹⁸ Furthermore, the proposed channel substitution would not cause any loss of service to viewers of KJTV-TV, would increase the population served within KJTV-TV's NLSC, and would provide KJTV-TV with access to better and more functional equipment.

6. We propose to substitute channel 11 for channel 35 as requested in the Joint Petition at Lubbock with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Lubbock, Texas	11	41	234

7. We also believe that channel 35 can be substituted for channel 36 at Lubbock, as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the Rules,¹⁹ at coordinates 33°-30'-08.3" N. and 101°-52'-21.3" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the Rules.²⁰ This proposed channel substitution would not cause any loss of service to the previously-authorized KCBD facility on channel 36, and would in fact increase that service by 191 persons.²¹

8. We propose to substitute channel 35 for channel 36 as requested in the Joint Petition at Lubbock with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Lubbock, Texas	35	1000	282

9. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the Rules,²² for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Lubbock, Texas	16, *25, 27, 31, 35, 36	11, 16, *25, 27, 31, 35

IV. PROCEDURAL MATTERS

10. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Joint Petitioners or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner

¹⁷ See 47 CFR § 73.618(a) (formerly 47 CFR § 73.625(a)). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations, the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (MB Mar. 4, 2024); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

¹⁸ 47 CFR § 73.622(a) (formerly §§ 73.616 and 73.623). See also *supra* n.17 and *Part 73 Amendment R&O* at para. 40.

¹⁹ See 47 CFR § 73.618(a). See also *supra* n.17.

²⁰ 47 CFR § 73.622(a). See also *supra* n.18 and *Part 73 Amendment R&O* at para. 40.

²¹ Joint Petition, Engineering Statement at 3.

²² 47 CFR § 73.622(j).

of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The Joint Petitioners must restate their present intention to apply for the channels if allotted and, if authorized, to build the stations promptly.²³ Failure to file may lead to denial of this 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.²⁴

11. *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.²⁵
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Joint Petition.²⁶

12. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,²⁷ 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).²⁸

- 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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁹
 - 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.

13. *Service.* Pursuant to section 1.420 of the Rules,³⁰ 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

²³ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

²⁴ 47 CFR § 1.420(j).

²⁵ 47 CFR § 1.420(d).

²⁶ 47 CFR § 1.420(g)(2).

²⁷ 47 CFR §§ 1.415, 1.419, and 1.420.

²⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²⁹ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

³⁰ 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.³¹ Additionally, a copy of such comments should be served on counsel for the Joint Petitioners, as follows:

Joan Stewart, Esq.
Wiley Rein LLP
2050 M Street, NW
Washington, D.C. 20036

Scott Woodworth, Esq.
Edinger Associates PLLC
1725 I Street, Ste. 300
Washington, D.C. 20006

14. *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.³² 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.³³ 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.³⁴ 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.³⁵ Any comment that has not been served on the Joint Petitioners 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.

15. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.³⁶ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

16. *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.

³¹ See 47 CFR § 1.420(a), (b) and (c).

³² 47 CFR §§ 1.1200 *et seq.*

³³ 47 CFR § 1.1208.

³⁴ 47 CFR § 1.1204(a)(10).

³⁵ 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).

³⁶ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

17. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³⁷ do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the Rules.³⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³⁹ 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 2002.⁴⁰

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

19. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau at Joyce.Bernstein@fcc.gov; Emily Harrison, Video Division, Media Bureau at Emily.Harrison@fcc.gov; or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov.

V. ORDERING CLAUSES

20. **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 Act, 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**.

21. **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. 24-224 and RM-11988 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

³⁷ 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).

³⁸ 47 CFR § 73.622(j).

³⁹ See 44 U.S.C. §§ 3501-3520.

⁴⁰ See 44 U.S.C. § 3506(c)(4).

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

In the Matter of	)	
	)	
Petition for Waiver of	)	
	)	
Community Hospital	)	
Corporation	)	
	)	
Rural Health Care Universal Service	)	WC Docket No. 02-60
Support Mechanism	)	

ORDER

Adopted: July 29, 2024

Released: July 29, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies Community Hospital Corporation's (CHC) and the Interfacing Company of Texas's (ICTX) requests for waiver of the Rural Health Care (RHC) Program invoice filing deadline for all participants in the Healthcare Connect Fund (HCF) Program for funding year 2022.¹ We find that a blanket waiver extending the invoice deadline is not necessary for all HCF Program participants because the Bureau has already granted waivers of invoice filing deadlines on an individual basis and continues to have the ability to do so where good cause exists.

II. BACKGROUND

1. The HCF Program provides eligible health care providers with a flat 65% discount on an array of advanced telecommunications and information services.² The HCF Program funding disbursement process requires that an invoice be submitted to the Universal Service Administrative Company (USAC) using the FCC Form 463.³ In June 2022, USAC launched RHC Connect, a new application filing platform to replace the legacy My Portal platform.⁴ Since the launch, USAC has

¹ See Petition for Limited Waiver of the Rural Health Care Invoice Filing Deadline, WC Docket No. 02-60 (filed Oct. 6, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10060389102944> (CHC Petition for Waiver); Petition for Limited Waiver of the Rural Health Care Invoice Filing Deadline and Letter in Support of Community Hospital Corporation's October 6, 2023 Petition, from Jason Danowsky Counsel for Interfacing Company of Texas LLC, WC Docket No. 02-60 (filed Feb. 23, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10223181818899> (ICTX Petition for Waiver). See also Letter of Support from Kristen Corra, Policy Counsel to Schools, Health & Libraries Broadband (SHLB) Coalition, to Trent Harkrader, Bureau Chief, Wireline Competition Bureau, FCC, WC Docket No. 02-60 (dated Dec. 22, 2023).

² See 47 CFR §§ 54.607-54.618.

³ See USAC, *Rural Health Care, Healthcare Connect Fund Program, Step 6: Invoice USAC*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-6-invoice-usac/> (last visited June 11, 2024).

⁴ See USAC, *Rural Health Care, June 2022 RHC Monthly Newsletter* (June 2, 2022), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-June-2022.pdf>.

gradually migrated program forms to RHC Connect, including the FCC Form 463, in funding year 2022.⁵ Program procedures require that the health care provider initiate the invoicing process by preparing the FCC Form 463 and sending it via RHC Connect to the service provider for completion.⁶ Section 54.627(a) of the rules requires that the completed FCC Form 463 be submitted to USAC within 120 days of the service delivery deadline, unless a later date applies due to a revised funding commitment or successful appeal of a denied funding request.⁷ The invoicing deadline for funding year 2022 was October 30, 2023.⁸ RHC Program participants may request a one-time 120-day extension of the invoice filing deadline, which USAC is obligated to grant if timely requested.⁹ The extended invoice deadline for funding year 2022 was February 26, 2024.¹⁰

2. CHC is a not-for-profit support organization that owns, manages, and consults with hospitals across the country.¹¹ CHC participates as a consortium leader in the RHC Program on behalf of small community hospitals that it owns or manages.¹² In its Petition, filed October 6, 2023, CHC requests that all invoice deadlines in the HCF Program for funding year 2022 be delayed 120 days.¹³ CHC believes the extension is warranted due to the time needed for some service providers to obtain a Unique Entity Identifier from SAM.gov for the migration of FCC Form 463 from My Portal to RHC Connect and delays in processing FCC Form 463 submissions in RHC Connect due to pending FCC Form 460 revisions.¹⁴

3. In support of its request, CHC states that RHC Connect holds invoicing activity associated with a health care provider when an FCC Form 460 for that health care provider is under review by USAC.¹⁵ CHC asserts this may cause delays in FCC Form 463 submissions to USAC,

⁵ See USAC, *October 2022 RHC Monthly Newsletter* (dated Oct. 5, 2022), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-October-2022.pdf>.

⁶ See USAC, *Rural Health Care, Healthcare Connect Fund Program, Step 6: Invoice USAC*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-6-invoice-usac/> (last visited June 11, 2024). Both the health care provider and service provider are required to make certifications as to, among other things, the accuracy of the information contained in the FCC Form 463 before USAC may process and pay the invoice. See 47 CFR § 54.627(d)(1).

⁷ 47 CFR § 54.627(a). The service delivery deadline, with limited exceptions, is June 30 of the funding year for which program support was sought. 47 CFR § 54.626(a). RHC Program participants may request a one-time 120-day extension of the invoice filing deadline, which USAC is obligated to grant if timely requested. 47 CFR § 54.626(b).

⁸ See USAC, *Rural Health Care, Additional Program Guidance, Funding Year Overview*, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited June 11, 2024); see also 47 CFR § 1.4(d), (e), (j) (“if . . . the filing date falls on a holiday [defined to include Saturday or Sunday], the document shall be filed on the next business day.”).

⁹ See 47 CFR § 54.627(b) (“Invoice deadline extension. Service providers or billed entities may request a one-time extension of the invoicing deadline by no later than the deadline calculated pursuant to paragraph (a) in this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.”).

¹⁰ See *id.*; see also 47 CFR § 1.4(d), (e), (j).

¹¹ See CHC Petition for Waiver at 2.

¹² *Id.*

¹³ CHC Petition for Waiver at 2. The request includes the standard invoice deadline and the extended deadline automatically granted upon request under section 54.627(b).

¹⁴ The FCC Form 460 is used to determine a site’s eligibility and register a site for the HCF Program. See USAC, *Step 1: Determine Eligibility of Your Site*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-1-determine-eligibility-of-your-site/#> (last visited June 11, 2024). See also CHC Petition for Waiver at 4-6.

especially in situations where the service provider must resubmit an FCC Form 463 with a revision due to a line-item denial.¹⁶ CHC also believes that when the transition to RHC Connect occurred, only the primary account holder was initially able to access the new RHC Connect system and secondary account holders were unable to access RHC Connect until the primary account holder reauthorized the accounts in RHC Connect.¹⁷ CHC argues that the inability for secondary account holders to access RHC Connect, in addition to the time needed to reestablish the accounts, would be a barrier to timely invoice submission, since these secondary account holders are often the individuals that actually work the accounts.¹⁸

4. ICTX is a service provider that interfaces with CHC on administrative matters in the HCF Program.¹⁹ ICTX's Petition for Waiver supports and reiterates CHC's arguments in favor of a blanket 120-day invoice filing deadline extension.²⁰ Particularly, ICTX emphasizes that delays in obtaining a Unique Entity Identifier from SAM.gov impact the RHC invoicing process because a service provider cannot approve the FCC Form 463 if its banking information or contact information is outdated and a Unique Entity Identifier is required to update the information on the FCC Form 498.²¹ Both ICTX and CHC assert that the process to obtain a Unique Entity Identifier may take several weeks, which could cause service providers to miss the invoice filing deadline because the service provider will be unable to access RHC Connect and approve invoices.²²

III. DISCUSSION

5. 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 Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.²⁶

6. We deny the Petitions for Waiver seeking a blanket extension of the invoicing deadline for all HCF Program funding requests for funding year 2022. CHC and ICTX have not demonstrated special circumstances warranting a blanket waiver of the invoice deadline for all funding year 2022 HCF Program funding requests. While the Bureau may issue a blanket waiver on occasion where good cause exists, it is inappropriate to grant a widespread waiver when an individualized approach to addressing

(Continued from previous page) _____

¹⁵ CHC Petition for Waiver at 3-4.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 4.

¹⁹ ICTX Petition for Waiver at 2-3.

²⁰ ICTX Petition for Waiver at 1.

²¹ See ICTX Petition for Waiver at 2; see also *Federal Government Transition From the Data Universal Numbering System Number to a New Unique Entity Identifier for Sam.Gov as of April 4, 2022*, Public Notice, 37 FCC Rcd 4697 (2022). As of November 2022, an active Unique Identifier is required to modify the FCC Form 498, the form is used for remittance collection, payment, and service provider contact information. See USAC, *FCC Form 498*, <https://www.usac.org/rural-health-care/service-providers/fcc-form-498/> (last visited June 11, 2024).

²² ICTX Petition for Waiver at 2; CHC Petition for Waiver at 6. See SAM, *Get Started with Registration and the Unique Entity ID*, <https://sam.gov/content/entity-registration> (last visited June 11, 2024).

²³ 47 CFR § 1.3.

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

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

²⁶ *Northeast Cellular*, 897 F.2d at 1166.

requests for waivers is available and more suitable for the circumstances.²⁷ The Commission takes a case-by-case approach analyzing the particular circumstances and factors presented by a petitioner in its waiver analysis. CHC's Petition requested a waiver for all HCF Program participants for funding year 2022 on the basis of technical issues causing delays with filing invoices and argued that a blanket waiver was necessary because of the amount of undisbursed commitments issued for funding year 2022.²⁸ Notwithstanding these claims, aside from CHC and ICTX's petitions, the Bureau does not have any pending requests for a waiver of the invoice deadline from individual health care providers.

7. Based on the record, we find that the Commission's case-by-case approach for resolving waiver requests of the invoice deadline, rather than a blanket waiver, is appropriate here. The Bureau has already granted individual invoice deadline extensions for funding year 2022 HCF Program funding requests to the limited number of petitioners that have experienced the issues described in CHC's and ICTX's Petitions, including an individual waiver for a CHC funding request for services provided by ICTX.²⁹ CHC and ICTX have not demonstrated special circumstances meriting a waiver on an HCF Program-wide basis or that such a waiver would be in the public interest. As noted above, impacted parties sought and received individualized waivers extending their invoice deadlines. There have not been any technical issues with FCC Form 463 submissions, and USAC conducted outreach to advise HCF Program participants of the need to obtain a Unique Entity Identifier.³⁰ Further, the mere fact that some health care providers have not yet submitted an FCC Form 463 for a funding request does not demonstrate that delays with the invoicing process prevented the filing of the form. There are other reasons that participating health care providers may not have submitted an invoice for committed services, most notably, the health care provider is not actually using the required services.³¹ For the foregoing reasons, we deny CHC's and ICTX's Petitions. However, we make clear that to the extent an individual health care provider needs an extension of the invoice deadline, it has the ability to file a request for waiver of the invoice deadline based on its individual circumstances.

²⁷ *Federal-State Joint Board On Universal Service; CTIA—The Wireless Association Petition for Reconsideration*, Order on Reconsideration, 23 FCC Rcd 7333, 7335, para. 9 (2008) (stating that the Commission's waiver analysis is a case-by-case approach for analyzing the particular circumstances and factors presented by a petitioner seeking waiver relief, and the Commission's "longstanding determination that continuing to follow an individualized approach to addressing requests for waiver best serves the public interest."). See *Joint Petition of CTIA and The Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline*, WT Docket No. 05-288, Order, 22 FCC Rcd 303 (2007) (*2007 E-911 Blanket Waiver Denial Order*) (denying a blanket waiver of the Commission's rules when an individualized approach best serves the public interest).

²⁸ CHC Petition for Waiver at 6-7.

²⁹ 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, Public Notice, DA 24-176 (WCB Mar. 1, 2024) (granting waivers of the invoice filing deadline in the Healthcare Connect Funding Program for funding year 2022); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 24-296 (WCB Apr. 1, 2024) (granting waivers of the invoice filing deadline in the Healthcare Connect Funding Program for funding year 2022, including a waiver for a CHC funding request for services provided by ICTX).

³⁰ See USAC, *UEI Now Required on FCC Form 498* (dated Nov. 16, 2022) <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-November-2022.pdf>; USAC, *January 2023 RHC Monthly Newsletter* (dated Jan. 5, 2023), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2023-newsletter/RHC-Newsletter-January-2023.pdf>. See also USAC, *FCC Form 498*, <https://www.usac.org/rural-health-care/service-providers/fcc-form-498/> (last visited June 11, 2024).

³¹ See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, 2023 WL 1420076, at *19 (Jan. 27, 2023) (amending the invoicing process for the Telecom Program to ensure that invoices are only submitted after services have been provided to health care providers).

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a) that the Petitions for Waiver filed by the Community Hospital Corporation on October 6, 2023 and Interfacing Company of Texas on February 23, 2024 ARE DENIED.

9. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 CFR. § 1.103(a), that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-733
Released: July 29, 2024

DUE DATE FOR FILING OF ACCESSIBILITY CERTIFICATIONS AND CONTACT INFORMATION FOR INTEROPERABLE VIDEO CONFERENCING SERVICES AND EQUIPMENT

CG Docket Nos. 03-123, 10-213, 23-161

By this Public Notice, the Federal Communications Commission (FCC or Commission) establishes October 3, 2024, as the initial due date for manufacturers and providers of interoperable video conferencing services (IVCS)¹ and equipment to submit accessibility contact information and certifications of compliance with the recordkeeping requirements of Part 14 of the Commission's rules.² Covered manufacturers and providers must file in the Recordkeeping Compliance Certification and Contact Information Registry (RCCCI Registry), a web-based system designed to facilitate compliance with these obligations.

In the *Access to Video Conferencing Order*, the Commission clarified the scope of application of section 716 of the Communication Act of 1943, as amended,³ and the Commission's implementing rules⁴ to video conferencing services and equipment.⁵ Given the extended pendency of questions regarding the application of Part 14 to video conferencing, the Commission allowed additional time, until September 3, 2024, for covered IVCS providers and equipment manufacturers to comply with the requirements of Part 14.⁶

¹ IVCS is a "service that provides real-time video communications, including audio, to enable users to share information of the user's choosing."

² See 47 CFR § 14.31(b) *Accessibility Recordkeeping Compliance Certification and Contact Information Reporting Requirements*, CG Docket No. 10-213, Public Notice, DA 24-117, at n.2 (CGB Feb. 26, 2024).

³ 47 U.S.C. § 617.

⁴ 47 CFR pt. 14.

⁵ *Access to Video Conferencing; Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, CG Docket Nos. 23-161, 10-213, 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, 38 FCC Rcd 6300, 6302, 6313, paras. 3, 28 (2023) (*Access to Video Conferencing Order*) (ruling that section 716 and Part 14 apply to all services and equipment covered by the statutory definition of "IVCS," i.e., to any "service that provides real-time video communications, including audio, to enable users to share information of the user's choosing," and to equipment used with such a service); see also 47 U.S.C. § 153(27).

⁶ See *Access to Video Conferencing Order*, 38 FCC Rcd at 6317-18, para. 41; *Consumer and Governmental Affairs Bureau Announces Compliance and Comment Dates for the Interoperable Video Conferencing Services Proceeding*, CG Docket Nos. 03-123, 10-213, 23-161, Public Notice, 38 FCC Rcd 6778 (2023).

Included in these requirements is an obligation to maintain records of efforts to implement these requirements.⁷ Providers of advanced communications services (ACS) and manufacturers of ACS equipment are required to file annually, on April 1 of each year, a certificate of compliance with the recordkeeping rules, which includes the contact information for the person(s) authorized to resolve accessibility complaints.⁸ However, because the Commission extended the compliance date for IVCS providers and manufacturers, the initial filing date for these entities was deferred.⁹ To allow a reasonable time after the compliance deadline for IVCS providers and manufacturers to prepare their compliance filings, the Consumer and Governmental Affairs Bureau sets the initial filing date for these entities as October 3, 2024. In future years, the filing date for IVCS providers and manufacturers shall be April 1, the same date as for other providers and manufacturers of ACS and ACS equipment.

To submit a recordkeeping certification or to enter or update contact information, please go to <https://apps.fcc.gov/rccci-registry/>.¹⁰ Additional guidance for filers is available at: <https://www.fcc.gov/rccci-filing-instructions>.

Accessible Formats. 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).

Additional Information. For further information regarding this Public Notice, contact Molly Burgdorf, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418-2173 or by e-mail to Molly.Burgdorf@fcc.gov.

-FCC-

⁷ 47 U.S.C. § 618(a)(5)(A); *see also* 47 CFR § 14.31(a).

⁸ 47 CFR § 14.31(b).

⁹ *Accessibility Recordkeeping Compliance Certification and Contact Information Reporting Requirements*, CG Docket No. 10-213, Public Notice, DA 24-177, at n.2 (CGB Feb. 26, 2024).

¹⁰ The RCCCI Registry is the sole means for filing annual recordkeeping compliance certifications and contact information, and for updating that contact information as needed.



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 24-734

Released: August 1, 2024

FCC ANNOUNCES ANTICIPATED RENEWAL OF ITS DISABILITY ADVISORY COMMITTEE AND SOLICITS NOMINATIONS FOR MEMBERSHIP

By this Public Notice, the Federal Communications Commission (FCC or Commission), consistent with the Federal Advisory Committee Act (FACA),¹ announces its intent to recharter the Disability Advisory Committee (DAC or Committee). The Commission intends to recharter the DAC for a period of two (2) years following consultation with the Committee Management Secretariat, General Services Administration. By this Public Notice, we seek nominations for membership.

PURPOSE AND FUNCTION

The mission of the Committee is to make recommendations to the Commission regarding disability issues specified by the Commission. Such disability issues may include advanced communications services and equipment, access to 911, hearing aid compatibility, the National Deaf-Blind Equipment Distribution Program, telecommunications relay services, telecommunications services and equipment, access to televised emergency information, accessible user interfaces on video programming apparatus and access to program guides and menus provided by navigation devices, audio description, and closed captioning.

The DAC will provide recommendations to the Commission on those disability access issues specified by the Commission after reviewing relevant data and information and performing those analyses that are necessary to respond to the questions or matters before it.

BACKGROUND

Members will serve at the discretion of the Chairwoman of the FCC. The Commission will determine the appropriate Committee size necessary to effectively accomplish the Committee's work. Members will be encouraged to participate in deliberations of at least one working group or other subgroup, if established. The time commitment for participation in any such group may be substantial. However, working group 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 DAC.

Meetings of the full Committee 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 meetings will be fully accessible to individuals with disabilities.

WHO MAY APPLY FOR MEMBERSHIP AND OBLIGATIONS OF MEMBERS

The Commission seeks nominations from consumer organizations, industry and trade

¹ 5 U.S.C. Ch.10 (§§ 1001 *et seq.*)

associations, corporations, governmental entities, or other entities from both the public and private sectors that wish to be considered for membership on the Committee. Selections will be based on factors such as expertise and diversity of viewpoints necessary to effectively address the topics before the Committee. Chairwoman Rosenworcel will again look to include in the DAC's membership a broad variety of stakeholders.

All organizational or individual members appointed to the Committee or its working groups are subject to an ethics review by the Commission's Office of General Counsel. Some applicants possessing expertise or perspectives of interest to the Committee, and who have been appointed to serve on the Committee in an individual capacity (and not as the representative of a nonprofit organization, corporation, or other entity), are deemed to be Special Government Employees (SGEs). Such individuals are ineligible to serve if they are 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. The Commission anticipates that while it may appoint persons to serve as SGEs on working groups, it is unlikely to appoint such individuals to serve on the parent DAC.

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 of the DAC any changes in representation during their tenure on the federal advisory committee. Committee members will not be compensated for their service.

NOMINATION PROCEDURE, DEADLINE, AND MEMBER APPOINTMENTS

Nominations for membership must be submitted to the FCC no later than Monday, September 30, 2024. All applications, including the requisite information and statements listed below, should be submitted via an online application form at <https://www.fcc.gov/disability-advisory-committee/membership-application>. Please contact Joshua Mendelsohn, DAC's Designated Federal Officer (DFO) at DAC@fcc.gov if any organizations experience difficulties submitting nominations via the online application form.

Organizations choosing to file by paper may send their nominations by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All correspondence must be addressed to Joshua Mendelsohn, DAC DFO, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

APPLICATION PROCEDURE FOR ORGANIZATIONS

Applications from nonprofit organizations, corporations, or other entities ("organizational applicants") proposing a nominee should include the following:

- The name of the organizational applicant applying for Committee membership (including whether the organizational applicant has previously had representatives that served on the Committee);
- The name of the organizational applicant's nominee as its primary representative, including title, mailing address, email address, and telephone number of that nominee;
- The name of the organizational applicant's nominee as its alternate representative (if any), including title, mailing address, email address, and telephone number of that nominee;
- A statement of the interests represented by the organizational applicant noting the constituency represented by the organizational applicant (e.g., persons with disabilities, government entity, industry, trade association), as well as the benefit of having the organization represented on the Committee;
- A statement summarizing the nominees' qualifications and reasons why the nominees should be appointed to represent the organizational applicant on the Committee;
- Current resumes of the organizational applicant's nominees for primary and alternate representatives that describes their educational background and professional experience;
- A statement by the organizational applicant indicating a willingness to serve on the Committee for a two-year term, a commitment to attend at least three plenary one-day Committee meetings per year (to be conducted in-person or, if appropriate, by teleconference), a commitment to work on at least one working group or subcommittee, and an acknowledgement that the organizational applicant (and its nominees) will serve without reimbursement of travel expenses or payment of honoraria, and;
- A narrative statement detailing the organizational applicant's previous involvement with issues relevant to the Committee's work and its ability and willingness to contribute substantively to the Committee's deliberations through its representatives.

An organizational applicant nominating a primary and alternate representative to serve on its behalf on the Committee must submit written confirmation by an authorized person (*e.g.*, an official of the organizational applicant) that the representative is authorized to serve on its behalf. The nominating official must possess the executive authority or hold a sufficiently high-level position within the organization or company to select a representative whose actions will be legally binding on the organization or company. 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 supports the nomination of [insert proposed member's name], who is currently [an employee of/consultant/attorney to the company], to serve as its representative on the Commission's Disability Advisory Committee."

Where nominees are 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 where the applicant or nominee is individually a party to such a contract or providing services for the benefit of the FCC to other entities or organizations under such a contract, the application must include the following: 1) a general description of the contract/agreement; 2) a description of the product/services that the applicant or nominee provides pursuant to the contract/agreement; 3) a list of all parties to the contract/agreement; 4) the name of the Commission contracting officer (if known); and 5) a certification of 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 nominee, as applicable, has applied for membership on the Commission's Disability Advisory Committee.

All nominees are required to disclose whether they represent clients in matters before the FCC or in matters that may come before the DAC, other than representing the organizational applicant that has nominated them for service on the DAC, and nominees shall provide all relevant details of any such representation.

APPLICATION PROCEDURES FOR INDIVIDUALS

Applications from individual applicants who would serve as SGEs, as defined above, are primarily for certain Working Group memberships and should include the following:

- The individual applicant's name;
- The individual applicant's mailing address, e-mail address, and telephone number;
- A description of the organization, if any, by whom the applicant is employed;
- A statement summarizing the individual applicant's qualifications, including specific knowledge or expertise that is relevant to the Committee, and reasons why the individual applicant should be appointed to a working group of the DAC or possibly the parent DAC;
- A statement that the individual applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission;
- A statement that the applicant does not have clients with matters before the Commission or that may come before the Commission;
- A statement that the individual applicant is not a registered federal lobbyist;
- A statement by the individual applicant indicating a willingness to serve on the Committee for a two-year term, a commitment to attend at least three plenary one-day meetings per year (to be conducted in-person or, if appropriate, by teleconference), a commitment to participate in at least one working group or subcommittee; and an acknowledgement that the individual applicant will serve without reimbursement of travel expenses or payment of honoraria;
- A statement as to whether the individual applicant has served on the Committee previously; and
- A current resume or biography that describes the individual applicant's educational background and professional experience.

Further, as noted above, financial and other additional disclosures may also apply to individual applicants.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the Committee will be subject to the same evaluation criteria. Members will be appointed for a term not to exceed the expiration date of the Committee's charter.

After the applications have been reviewed, and upon renewal of the Committee's charter, the Commission will publish a notice in the Federal Register announcing the appointment of the Committee members and the first meeting date of the Committee. All applicants will be notified concerning the disposition of their applications.

For further information about the Committee or for assistance, please visit www.fcc.gov/dac or contact Joshua Mendelsohn, DAC DFO, at dac@fcc.gov or (202) 559-7304 (voice or videophone).

ACCESSIBLE FORMATS

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 (202) 418-0530 (voice) or 844-432-2275 (videophone).

– FCC –



Federal Communications Commission
Washington, D.C. 20554

July 30, 2024

DA 24-735
In Reply Refer to:
1800B3-HD
Released: July 30, 2024

Mr. Robert Connelly
Weather Alert Radio Network
17909 Holly Brook Drive
Tampa, FL 33647

In re: Weather Alert Radio Network
Applications for Construction Permits
for New Low Power FM Stations in
Communities in Alabama, Florida,
Georgia, Louisiana, Mississippi, North
Carolina, South Carolina, and Texas

Petitions for Reconsideration

Dear Mr. Connelly:

We have before us a petition for reconsideration (Petition) filed by the Weather Alert Radio Network (WARN).¹ WARN challenges our dismissal of 105² of its applications for construction permits for new low power FM (LPFM) stations in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas (Applications).³ We dismissed the Applications after finding WARN had not satisfied the eligibility requirements set forth in sections 73.853 of the Commission's rules (Rules), and had not submitted requests for waiver of those requirements with the Applications.⁴

¹ To conform to the requirements of the Commission's Licensing and Management System (LMS), WARN submitted the Petition separately with respect to each application for which WARN seeks reconsideration. Each time WARN filed the Petition with respect to an application, LMS assigned it a different Pleading File Number. The Attachment to this letter decision lists the Pleading File Numbers associated with the Petition with respect to each application for which WARN seeks reconsideration.

² The Petition itself was filed 106 times. It was filed twice in relation to Application File No. 231634. *See* Attachment.

³ While the Commission generally prohibits an entity from holding an attributable interest in more than one LPFM station, WARN sought to rely on an exception to the general prohibition which allows "not-for-profit organizations and governmental entities with a public safety purpose [to] be granted multiple licenses if: (1) One of the multiple applications is submitted as a priority application; and (2) The remaining non-priority applications do not face a mutually exclusive challenge." *See* 47 CFR § 73.855.

⁴ *Weather Alert Radio Network*, Letter Order, DA 24-164 (MB rel. Feb. 23, 2024) (*Letter Order*). In the *Letter Order*, we dismissed an additional 98 applications WARN filed but which were not the subject of a Petition for Reconsideration. *See id.* at Attach. Among these unchallenged dismissals, are the dismissals of WARN's applications for construction permits for new LPFM stations at Saucier, Pass Christian, Pascagoula, Poplarville, and Biloxi, Mississippi; Cudjoe Key, Florida; Folkston, Georgia; Hatteras, North Carolina; and Suffolk, Virginia. *See* Application File Nos. 231524, 231627, 231846, 231645, 231551, 231571, 231644, 231894, 231920. Based on

WARN requests reinstatement of the Applications *nunc pro tunc* so that they may be amended to include requests for waiver of the eligibility requirements. For the reasons discussed below, we deny the Petition.

Background. The Commission restricts the types of entities that may hold LPFM authorizations and the types of service those entities may provide.⁵ Among the entities eligible to hold LPFM authorizations are “[s]tate and local governments and non-government entities that will provide noncommercial public safety radio services.”⁶ The Commission also requires that entities receiving LPFM authorizations be local (*i.e.*, based in the community their proposed LPFM stations will serve).⁷ In the case of a state or local government or non-government entity proposing a noncommercial public safety radio service, the Commission considers the entity to be local if it “has jurisdiction within the service area of the proposed LPFM station.”⁸

WARN filed the Applications during the 2023 LPFM filing window.⁹ In each of the Applications, WARN certified that “[i]t propose[d] a public safety radio service and ha[d] jurisdiction within the service area of the proposed LPFM station.”¹⁰ Attached to the Applications were documents entitled “Exhibit in Support of LPFM Application Public Safety Radio Program” (Exhibits).¹¹ The Exhibits explained that WARN proposes to use each LPFM station to “provide current local weather information, preparedness information and local resource information 24 hours per day and 7 days per week.”¹² They also stated that WARN has been in contact with various public safety organizations, “each of whom holds jurisdiction as a local, county, state or national government entity” and that the organizations “have agreed to work with [WARN] and have received information and correspondence

Exhibit A to the Petition, it appears WARN intended to challenge these nine dismissals. Petition at Exh. A. Because WARN did not actually file the Petition with respect to these applications, their dismissals (and the dismissals of the other 89 unchallenged dismissals) are final. 47 U.S.C. § 405(a) (requiring petitions for reconsideration to be filed within “thirty days from the date upon which public notice is given of the order, decision, report, or action complained of”); 47 CFR §§ 1.106(f) (same), 1.115(d) (requiring applications for review to be filed “within 30 days of public notice” of the action being challenged), 1.117(a) (“Within 40 days after public notice is given of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review.”). Regardless, even if WARN had filed the Petition with respect to those nine applications, we would have denied it for the reasons set forth in this letter.

⁵ 47 CFR § 73.853(a).

⁶ *Id.* § 73.853(a)(2). The other eligible entities and services are (1) nonprofit educational organizations that will use their LPFM stations to advance an educational program, and (2) Tribal Applicants that will provide noncommercial radio services. *Id.* § 73.853(a)(1), (3).

⁷ *Id.* § 73.853(b).

⁸ *Id.* § 73.853(b)(3).

⁹ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

¹⁰ Applications, Legal Certifications, Community-Based Criteria.

¹¹ WARN attached the same exhibit to each application for a proposed LPFM station in a particular state. The exhibits varied slightly depending on the state involved but generally contained the same information.

¹² Exhibits at para. 2.

regarding the programming and proposed application plans of [WARN's] proposed LPFM stations" in that state.¹³

On February 23, 2024, we issued the *Letter Order*. Therein, we found that the service WARN proposed did not qualify as a "public safety radio service" as that term is defined in section 309(j)(2)(A) of the Communications Act of 1934, as amended (Act).¹⁴ We further concluded that WARN had failed to demonstrate that it was eligible to hold an LPFM authorization because it had not stated "that it has jurisdiction in the service areas of the proposed LPFM stations or that it has been authorized by any of the public safety organizations that do hold jurisdiction in those service areas."¹⁵ Finally, we noted that WARN had not sought waiver of the requirement that it provide a public safety radio service as defined in section 309(j)(2)(A), or of the jurisdiction requirement. Accordingly, we dismissed the Applications as defective pursuant to section 73.3566 of the Rules.¹⁶

WARN then filed the Petition. Therein, WARN asserts that, prior to filing the Applications, it discussed the LPFM eligibility requirements with staff, and that staff never suggested that WARN seek waivers of those requirements.¹⁷ WARN also appears to argue that we erred in finding that it is not eligible to apply for or hold LPFM authorizations because the service it proposes is not a public safety radio service as that term is defined in section 309(j)(2)(A) of the Act, and because WARN failed to demonstrate that it has jurisdiction within the service area of each of the proposed LPFM stations.¹⁸ Alternatively, WARN seeks waivers of the requirement that its service meet the public service radio service definition set forth in section 309(j)(2)(A), and the requirement that WARN demonstrate it has jurisdiction.¹⁹ We consider the Petition below.

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.²⁰ WARN has not demonstrated any legal error in the Bureau's dismissal of the Applications.

Community-Based. We affirm our finding that WARN failed to demonstrate that it was local to each of the communities the LPFM stations proposed in the Applications would serve.²¹ As we explained in the *Letter Order*, for an LPFM applicant proposing a "public safety radio service" to be local with respect to its proposed LPFM station, the applicant must have jurisdiction within the proposed station's service area.²² WARN did not assert that WARN, itself, had jurisdiction within the service areas of the

¹³ *Id.* at para. 5.

¹⁴ *Letter Order* at 2-3, and n. 13. See also *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2215, para. 23 (2000) (*2000 LPFM Order*) (stating that "public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses").

¹⁵ *Letter Order* at 3.

¹⁶ 47 CFR § 73.3566(a).

¹⁷ Petition at 2.

¹⁸ *Id.* at 4-9.

¹⁹ *Id.* at 6, 7, 9.

²⁰ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

²¹ *Letter Order* at 3.

²² *Id.*

LPFM stations proposed in the Applications. Therefore, for each proposed LPFM station, WARN needed to demonstrate that (1) a governmental entity (or an official authorized to act on behalf of a governmental entity) had contracted with WARN for the provision of its service within the station's service area, had authorized WARN in writing to provide its service within the station's service area, or had designated in writing that WARN would provide its service on the governmental entity's behalf within the station's service area, and (2) that the governmental entity had jurisdiction with the station's service area.

We are unpersuaded by WARN's argument that it demonstrated it had jurisdiction "through a mountain of communication, implied contracts, verbal agreements, authorizations and communications by public safety agencies to disseminate critical weather information to the public via its RSS feed system (non-broadcast) and through its proposed LPFM radio network."²³ WARN did not submit any of these materials to the Commission with the Applications.²⁴ Further, although the *Letter Order* specifically stated that "WARN offered no evidence that it has jurisdiction within any of [its proposed LPFM] stations' service areas,"²⁵ WARN did not submit any of the materials with the Petition. Instead, WARN repeated its statement that it would provide the materials if requested to do so.²⁶ Because WARN's assertions about communications, implied contracts, verbal agreements, and authorizations remain unsubstantiated, we continue to afford them no weight.

Finally, to the extent that WARN emphasizes that various public safety organizations are willing to work with it, we find that a willingness to work or cooperate with WARN is not enough to satisfy the jurisdiction requirement. We note that all that these public safety organizations appear to be doing is providing WARN with access to information that is available to all members of the public through other sources.²⁷ To find that these types of information sharing relationships satisfy the jurisdiction requirement set forth in section 73.853(b)(3) of the Rules would essentially nullify that requirement. At a minimum, a non-government entity proposing to use an LPFM station to provide a public safety radio service must provide evidence that a governmental entity has contracted with, designated or authorized the non-governmental entity to provide public safety radio services on its behalf, and that the governmental entity has jurisdiction in the service area of the proposed LPFM station.

Waiver Request. The Commission may waive rule provisions "for good cause shown."²⁸ As interpreted by the courts, a party seeking waiver of a rule's requirements must demonstrate that "special

²³ Petition at 7.

²⁴ *Id.* at 9. See also Applications, at Exhibits.

²⁵ *Letter Order* at 3.

²⁶ Petition at 3.

²⁷ It is unclear what WARN means when it states that public safety organizations are willing to work with it. Elsewhere in the Petition, WARN appears to acknowledge that its relationships with these organizations involve the organizations agreeing to share "updated information" with WARN. *Id.* at 3, 7, 8. This is apparently no more than treating WARN like any member of the public that seeks information from an agency. WARN also states that it is authorized by public safety organizations to "disseminate critical weather information to the public via its RSS feed system (non-broadcast) and through its proposed LPFM radio network." *Id.* at 7. However, WARN fails to show that any such organization has the jurisdiction and ability to restrict any such communications, is in the practice of doing so, or has provided WARN with an exemption from any such theoretical restrictions. And, WARN relies on the fact that the National Weather Service "authorizes" the use of its data and forecasts to the media. *Id.* at 7 (including a link to <https://www.weather.gov/disclaimer/>). This is essentially an acknowledgement that the weather information provided by the National Weather Service is generally in the public domain – it certainly does not confer any particular status on WARN.

²⁸ 47 CFR § 1.3.

circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁹ In order to demonstrate the required special circumstances, a party seeking waiver must show that the application of the rule would be inequitable, unduly burdensome or contrary to the public interest or that no reasonable alternative existed which would have allowed it to comply with the rule.³⁰ Alternatively, a party requesting a waiver must show that a waiver would not conflict with the policy underlying this rule.³¹

We deny WARN’s request that we waive the requirement that it demonstrate it has jurisdiction within the service area of each of the LPFM stations proposed in the Applications. WARN has failed to demonstrate the required special circumstances. For instance, although WARN asserts that compliance with the jurisdiction requirement is “impossible without some latitude from the Commission,”³² that is not the case. Contrary to WARN’s assertion,³³ we do not require that a government entity cede jurisdiction or transfer its authority to a non-government LPFM applicant. We do, however, require something more than a government entity expressing a willingness to work with a non-government applicant. As noted above, a governmental entity with jurisdiction in a proposed LPFM station’s service area can contract with, designate, or authorize a non-government entity to provide public safety radio services within that area. To allow something less to satisfy the jurisdiction requirement would eviscerate it and undermine the Commission’s efforts to ensure that LPFM stations are operated by entities grounded in the communities the stations serve.³⁴ In any event, we note that another non-government applicant—Trinity County Information Service, Inc.—recently demonstrated “jurisdiction” by submitting a letter from a local governmental public safety entity which designated TCIS as a “non-governmental public safety information entity.”³⁵ Finally, to the extent that WARN suggests that application of the jurisdiction requirement here is contrary to the public interest,³⁶ we disagree. The information that WARN proposes to broadcast before, during and after extreme weather events is transmitted to the public from other sources. Additionally, when there are not extreme events impacting a proposed LPFM station’s service area, the station will broadcast weather forecasts and other programming that does not protect the safety of life, health or property, and also is available from numerous other sources.

Informal Staff Guidance. WARN devotes a portion of the Petition to summarizing its informal consultations with Audio Division staff, and states that, based on its discussions with staff, it “believed it was on firm footing on both the eligibility and community presence issues.”³⁷ As WARN acknowledges,

²⁹ See *Northeast Cellular*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Accord, e.g., *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

³⁰ See *Northeast Cellular*, 897 F.2d at 1166.

³¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-58 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972)

³² Petition at 6.

³³ *Id.* at 7 (asserting that “public safety organizations at all levels (national, state and local) are willing to ‘work’ with WARN” but generally will not ‘sign agreements,’ especially agreements that would effectively transfer their responsibilities (jurisdiction) to WARN, without some sort of ‘control over the licenses or the programming, which is impermissible under current FCC rules”).

³⁴ *2000 LPFM Order*, 15 FCC Red at 2219, para. 33.

³⁵ See Application File Nos. 23048, 23049, 23050, 23051, 23053, 23054, 23055, 23056. See also *Actions*, Public Notice, Report No. PN-2-240613-01, at 2, 3, 4, 9 (MB June 13, 2024).

³⁶ Petition at 7.

³⁷ *Id.* at 2-3.

however, informal staff advice is not binding.³⁸ In any event, WARN mischaracterizes its interactions with staff. On August 9, 2023, staff emailed WARN, indicating that WARN would need to demonstrate that it had jurisdiction in the areas it wishes to serve, and citing section 73.853(b)(3) of the Rules.³⁹ When WARN responded, asserting that “the nature of the broadcast would constitute jurisdiction as the National Weather Service is a National Provider of local forecasts,” staff explained that the National Weather Service’s jurisdiction was irrelevant because it would not be the licensee of the proposed LPFM stations. Staff explained that the licensee itself must have jurisdiction,⁴⁰ and stated that “[o]ur preferred demonstration of jurisdiction would be some kind of contract or agreement with local/state/federal agencies.”⁴¹

We are not persuaded by WARN’s assertion that it “only provided basic information in its applications as it felt the staff already had an in-depth representation including contacts and phone numbers of state public safety officials as an example and thus believed further disclosure of the same information at the application stage would be redundant and unnecessary.”⁴² It is important for an application itself to include all the materials upon which an applicant wishes to rely, for two reasons. First, applications for construction permits for new LPFM stations are subject to the local public notice requirements set forth in section 311 of the Act⁴³ and section 73.3580 of the Rules.⁴⁴ Congress adopted the local public notice requirements over half a century ago to ensure that members of the public were made aware of broadcast applications, thereby affording them a meaningful opportunity to participate in the broadcast licensing process.⁴⁵ These public notice requirements have applied to LPFM applications

³⁸ *EADS Broad. Corp.*, Memorandum Opinion and Order, 9 FCC Red 2859, 2860, n.3 (1994). Any party relying on informal staff advice does so at its own risk. *WPHR(FM), Ashtabula, Ohio*, Memorandum Opinion and Order, 11 FCC Red 8513, 8515, para. 10 (1996), citing *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Red 4705, 4708, para. 22 (1991) (“A person relying on informal advice given by Commission staff does so at their own risk.”).

³⁹ E-mail from Alexander Sanjenis, Assistant Div. Chief, Audio Division, to Rob Connelly, Managing Partner, Audio Ventures Grp. (Aug. 9, 2023 15:34 EDT).

⁴⁰ E-mail from Alexander Sanjenis, Assistant Division Chief, Audio Division, to Rob Connelly, Managing Partner, Audio Ventures, Group (Aug. 18, 2023 9:31 EDT).

⁴¹ *Id.* Later, on November 14, 2023, staff contacted WARN by telephone to inform it that, based on the “example exhibit” it had shared with staff, staff could not conclude that the proposed service would be a public safety service. Given that staff actually did contact WARN about the “example exhibit,” we reject WARN’s claim that it received “no further response” from the Commission after it submitted the “example exhibit.” Petition at 2. We likewise reject WARN’s assertion that, because it received no response from staff, it reasonably believed that “its example list of contacts and relationships with various public safety agencies . . . would suffice as acceptable evidence of authorization.” *Id.* at 2.

⁴² Petition at 3.

⁴³ 47 U.S.C. § 311(a). Congress adopted the local public notice requirements as part of the pre-grant procedures established in the Communications Act Amendments, 1960. See PL 86-752, 74 Stat. 889, 892-93 (Sept. 13, 1960).

⁴⁴ 47 CFR § 73.3580. See also 47 CFR § 73.801 (listing section 73.3580 as one of the broadcast regulations applicable to LPFM stations).

⁴⁵ *New Section 0.417 and Amendment of Sections 1.526 (Formerly 1.359), 1.580 (Formerly 1.359), and 1.594 (Formerly in 1.362) of the Commission’s Rules Relating to Inspection of Records, to Pre-grant Procedures and to Local Notice of Filing or of Designation for Hearing of Broadcast Applications*, Report and Order, 45 FCC 2206, para. 9 (1965) (noting that Congress, in enacting the present pre-grant provisions of the statute [in the Communications Act Amendments, 1960], “zealously guarded the rights of the general public to be informed” and stating “[i]t is clearly the mandate of Congress that the public should be fully informed”).

since the Commission created the LPFM service.⁴⁶ If an applicant provides local public notice of its application to the public but the application does not include all materials the applicant wants the Commission to consider, then members of the public will not have a meaningful opportunity to participate in the broadcast licensing process.⁴⁷ Second, applicants often make changes to their applications and application exhibits prior to filing their applications. Even if an applicant has shared certain material with the staff informally in advance of filing, FCC staff who are responsible for reviewing thousands of applications each year have no way of knowing if the applicant still plans to rely on those materials unless that information is incorporated into the application itself or submitted as an exhibit to the application.

Finally, we reject WARN's specious argument that it could not have known that waiver of the jurisdiction requirement was necessary because the requirement was not discussed in the Commission's answer to a frequently asked question about LPFM on the FCC's website.⁴⁸ The particular webpage at issue includes the question: "Can my organization file multiple LPFM applications?"⁴⁹ The response states: "No, with two exceptions. A Tribal applicant can file up to two LPFM applications, while a nonprofit/governmental entity with a public safety purpose has no restrictions on the number of applications it can file."⁵⁰ As noted above, WARN approached staff months before the 2023 LPFM filing window, and staff specifically discussed with WARN the need to satisfy the jurisdiction requirement in section 73.853(b) of the Rules. In any event, the same webpage specifically urges potential LPFM applicants to "read and understand all the rules before you apply" and provides a link to the an electronic version of Part 73 of Title 47 of the U.S. Code (which contains the Commission's rules governing LPFM stations).⁵¹ Finally, the instructions to FCC Form 2100, Schedule 318 (Low Power FM Station Construction Permit Application) state that "[a]pplicants should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (CFR)."⁵²

⁴⁶ See *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, Second Report and Order, MB Docket Nos. 17-264, 17-105, 05-635 FCC Rcd 5094, 5116, paras. 45-46 (2020) (adopting proposal that Commission clarify "that LPFM stations will continue to have the same local public notice obligations as other NCE radio stations," and noting that, for the sake of clarity, the Commission was amending section 73.801 of the Rules to list section 73.3580). See also *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, MB Docket Nos. 17-264, 17-105, 05-6, Further Notice of Proposed Rulemaking, 34 FCC Rcd 9251, 9268, para. 36 (2019) (proposing to "continue to apply the local public notice rules to LPFM stations" and explaining that, "[a]lthough current section 73.3580 does not specifically reference LPFM stations' local public notice obligations, . . . other noncommercial educational FM and TV stations have such obligations, and . . . there is nothing in section 311 of the Act that could be read as exempting LPFM stations from its requirements").

⁴⁷ This is the case because materials an applicant has shared with staff during informal consultations generally are not associated with the applicant's later-filed application. Because these materials are not associated with the application, members of the public are unaware of their existence and unable to review and comment on them.

⁴⁸ Petition at 7-8.

⁴⁹ Low Power FM (LPFM) Frequently Asked Questions, <https://www.fcc.gov/media/radio/lpfm-frequently-asked-questions> (last visited July 16, 2024).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Instructions – Form 2100, Schedule 318 – Low Power FM Station Construction Permit Application, General Instructions, FCC Rules.

Other Issues. WARN also challenges our finding that its proposed service is not a public safety radio service, as that term is defined in section 309(j)(2)(A) of the Act, and alternatively requests a waiver of the requirement that its service satisfy all aspects of section 309(j)(2)(A)'s definition.⁵³ Because we affirm our finding that WARN is not eligible to be an LPFM licensee on other grounds (*i.e.*, WARN's failure to demonstrate that it has jurisdiction in each of the service areas of the LPFM stations proposed in the Applications), and because we deny WARN's request for waiver of the jurisdiction requirement, we need not reach WARN's other argument or rule upon WARN's other waiver request.

Conclusion/Actions. For the reasons discussed above, and pursuant to sections 4(i) and 405(a) of the Act,⁵⁴ and section 1.106(j) of the Commission's rules,⁵⁵ we **DENY** the Petition for Reconsideration filed by Weather Alert Radio Network on March 23, 2024.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

Attachment

⁵³ Petition at 4-6.

⁵⁴ 47 U.S.C. §§ 154(i), 405(a).

⁵⁵ 47 CFR § 1.106(j).

ATTACHMENT

Facility ID No.	Application File No.	City	State	Pleading File No.
782960	231543	Dauphin Island	AL	241879
782952	231834	Foley	AL	241878
778100	231833	Robertsdale	AL	241880
777979	231857	Seminole	AL	241877
778102	231544	Spanish Fort	AL	241875
778105	231521	Theodore	AL	241876
782827	231573	Alma	FL	241916
781918	231634	Baker	FL	241902, 241928
782831	231568	Big Pine Key	FL	241917
778145	231553	Brooksville	FL	241892
781979	231641	Cantonment	FL	241908
781974	231647	Chiefland	FL	241907
778164	231565	Chipley	FL	241897
782849	231594	Cocoa	FL	241920
782838	231570	Crestview	FL	241918
781986	231650	Crystal River	FL	241910
781969	231869	Daytona Beach	FL	241904
782845	231580	DeFuniak Springs	FL	241919
778146	231870	Dunnellon	FL	241891
782822	231581	Everglades City	FL	241915
782729	231583	Everglades National Park	FL	241913
778131	231586	Fernandina Beach	FL	241882
778141	231883	Fort Pierce	FL	241888
778147	231901	Homosassa	FL	241893
778137	231879	Inglis	FL	241883
778179	231663	Key Lar	FL	241894
778155	231657	Key West	FL	241884
778218	231905	Labelle	FL	241899
778178	231891	Lecanto	FL	241898
782852	231659	Marathon	FL	241921
782882	231903	Marco Island	FL	241922
778229	231910	Middleburg	FL	241900
782734	231942	Ochopee	FL	241914
782728	231542	Riverview	FL	241912
781963	231927	Santa Rosa Beach	FL	241903
781985	231935	Sopchoppy	FL	241909
778160	231861	Sugarloaf Key	FL	241885
778118	231876	Tavernier	FL	241887
778163	231961	Trenton	FL	241901
781991	231937	Venice	FL	241911

Facility ID No.	Application File No.	City	State	Pleading File No.
778153	231887	Vero Beach	FL	241890
778113	231888	Wabasso	FL	241881
778162	231959	Westville	FL	241895
781678	231601	Darien	GA	241930
781470	231620	Hinesville	GA	241927
782883	231911	Midway	GA	241931
781669	231605	Saint Simons Island	GA	241929
778257	231859	Shellman Bluff	GA	241923
778269	231841	St Marys	GA	241924
778150	231610	Townsend	GA	241925
781468	231614	Woodbine	GA	241926
778215	231498	Abbeville	LA	241859
778230	231545	Bell City	LA	241857
778211	231564	Chauvin	LA	241862
778213	231567	Covington	LA	241860
778116	231845	Houma	LA	241861
778055	231532	New Iberia	LA	241856
778093	231629	Thibodaux	LA	241858
778138	231551	Biloxi	MS	241874
778095	231866	Diamondhead	MS	241868
778182	231846	Pascaula	MS	241872
778096	231627	Pass Christian	MS	241871
778183	231645	Poplarville	MS	241873
778099	231524	Saucier	MS	241870
778050	231527	Vancleave	MS	241869
783155	231837	Barco	NC	241976
778061	231503	Bath	NC	241939
782021	231596	Beaufort	NC	241954
782034	231636	Bolivia	NC	241956
783029	231557	Buxton	NC	241967
783109	231561	Cedar Island	NC	241972
782088	231830	Havelock	NC	241957
783158	231899	Holly Ridge	NC	241978
783018	231904	Jacksonville	NC	241963
783012	231513	Kitty Hawk	NC	241960
778016	231906	Leland	NC	241941
783117	231516	Manteo	NC	241974
782092	231925	New Bern	NC	241958
783108	231917	Ocracoke	NC	241969
778224	231850	Supply	NC	241953
778060	231955	Washington	NC	241940
778254	231957	Wilmington	NC	241955

Facility ID No.	Application File No.	City	State	Pleading File No.
778255	231956	Wrightsville Beach	NC	241938
778260	231855	Bluffton	SC	241934
778259	231897	Hilton Head Island	SC	241935
781875	231907	Longs	SC	241937
778258	231858	Mount Pleasant	SC	241932
781871	231940	Murrells Inlet	SC	241936
778223	231941	Ridgeland	SC	241933
778010	231505	Bay City	TX	241840
778019	231507	Beaumont	TX	241842
783193	231854	Bishop	TX	241855
778014	231536	Deweyville	TX	241841
778017	231831	Orange	TX	241844
778149	231609	Port Aransas	TX	241847
778227	231839	Port Arthur	TX	241843
783189	231938	Port Lavaca	TX	241853
783167	231947	Refugio	TX	241849
778126	231606	Rockport	TX	241846
783187	231954	San Perlita	TX	241852
783171	231965	Santa Rosa	TX	241851
783192	231945	Sarita	TX	241854
783169	231519	Stowell	TX	241850
778125	231840	Sweeny	TX	241845
778007	231873	Victoria	TX	241848

In the Matter of)
)
800 MHz Regional Plans of the 55 Regional) PS Docket 23-237
Planning Committees)

Released: July 30, 2024

8479

Attachment

<u>Docket Name</u>	<u>Docket Number</u>
Alabama Public Safety Plan--Region 1	GN Docket No. 90-280
Arizona Public Safety Radio Communications Plan (Region 3)	PR Docket No. 91-143
Public Safety Radio Communications Plan For The Southern California Area	GN Docket No. 89-97
Northern California Regional Public Safety Plan--Region 6	GN Docket No. 90-287
New York Metropolitan Area Regional Public Safety Plan (Region 8)	GN Docket No. 88-476
Public Safety Radio Communications Plan For The Florida Area (Region 9)	GN Docket No. 90-119
Georgia Public Safety Plan - Region 10	PR Docket No. 92-189
Idaho Public Safety Plan - Region 12	PR Docket No. 93-149
Illinois Regional Public Safety Plan--Region 13	PR Docket No. 91-228
Indiana Regional Public Safety Plan - Region 14	GN Docket No. 90-178
Kansas Public Safety Plan (Region 16)	PR Docket No. 91-162
Kentucky Public Safety Plan - Region 17	PR Docket No. 93-132
Louisiana Public Safety Plan—Region 18	GN Docket No. 90-498
Public Safety Radio Communications Plan For The New England Area (Region 19)	GN Docket No. 90-53
Washington, D.C. Metropolitan Area Regional Public Safety Plan	GN Docket No. 90-7
Michigan Regional Public Safety Plan -- Region 21	GN Docket No. 90-221
Minnesota Public Safety Plan - Region 22	PR Docket No. 93-130
Mississippi Regional Public Safety Plan	GN Docket No. 89-478
Nebraska Regional Public Safety Plan -- Region 26	GN Docket No. 89-608
Public Safety Radio Communications Plan For The Philadelphia Metropolitan Area--Region 28	GN Docket No. 89-573
Albany Area Regional Public Safety Plan--Region 30	GN Docket No. 90-394
Ohio Public Safety Plan--Region 33	PR Docket No. 91-258
Oregon Public Safety Plan - Region 35	PR Docket No. 92-269

<u>Docket Name</u>	<u>Docket Number</u>
South Carolina Public Safety Plan - Region 37	PR Docket No. 93-78
South Dakota Public Safety Plan - Region 38	PR Docket No. 93-57
Tennessee Public Safety Plan - Region 39	PR Docket No. 93-58
North Central And North East Texas Public Safety Plan	GN Docket No. 88-549
Utah Public Safety Plan -- Region 41	PR Docket No. 91-282
Virginia Public Safety Plan - Region 42	PR Docket No. 91-300
Wyoming Regional Public Safety Plan (Region 46)	PR Docket No. 91-59
Puerto Rico Public Safety Plan - Region 47	PR Docket No. 93-82
Virgin Islands Public Safety Plan - Region 48	PR Docket No. 93-105
Austin Area Public Safety Plan - Region 49	PR Docket 92-190
El Paso Area-Public Safety - Region 50	PR Docket No. 92-286
Houston Area Regional Public Safety Plan (Region 51)	PR Docket No. 91-199
Lubbock Area Public Safety Plan - Region 52	PR Docket No. 92-1
Chicago Metropolitan Area Regional Public Safety Plan Region - 54	GN Docket No. 89-363
Buffalo Area-Public Safety - Region 55	PR Docket 92-287



PUBLIC NOTICE

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DA 24-737

July 30, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES EFFECTIVE DATE OF CERTAIN CYBERSECURITY LABELING FOR INTERNET OF THINGS REPORT AND ORDER RULES AND CLARIFIES EX PARTE STATUS OF CERTAIN PRESENTATIONS

PS Docket No. 23-239

By this Public Notice, the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) announces that certain rules adopted in the Cybersecurity Labeling for Internet of Things Report and Order (Order) have been published in the Federal Register and are effective August 29, 2024.¹ The rules that will go into effect on August 29, 2024, set out the goals, definitions, and some parameters and processes related to the IoT Labeling Program that do not require the collection of information from the public.²

Amendments to the rules that require the collection of information from the public, such as applications for the role of Cybersecurity Labeling Administrator or Lead Administrator, and applications seeking authority to use the FCC IoT Label, will not be effective until the Office of Management and Budget has completed review under the Paperwork Reduction Act.³ The Commission will publish a document in the Federal Register and release another Public Notice announcing that effective date.

By this Public Notice, the Bureau also clarifies that presentations to the Commission or its staff solely on matters addressing implementation of the Order in PS Docket No. 23-239 are exempt from the Commission's *ex parte* permit-but-disclose requirements,⁴ except to the extent such presentations have been specifically designated as permit-but-disclose by order, letter, or Public Notice.⁵ Exempt presentations include presentations addressing future public notices to be issued by the Bureau. All *ex parte* presentations addressing the Further Notice of Proposed Rulemaking in this proceeding, as well as

¹ *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking, 89 FR 61242 (March 15, 2024).

² This effective date applies to the amendments to Part 8, subpart B of the Commission's rules, addressing 47 C.F.R. §§ 8.201 (Incorporation by reference), 8.202 (Basis and purpose), 8.203 (Definitions), 8.204 (Prohibition on use of the FCC IoT Label on Products produced by listed sources), 8.205 (Cybersecurity labeling authorization), 8.206 (Identical defined), 8.207 (Responsible Party), 8.210 (Dismissal of application), 8.211 (Denial of application), 8.213 (Limitations on grants to use the FCC IoT Label), 8.216 (Termination of authorization to use the FCC IoT Label).

³ The following rules will not be effective until approved by the Office of Management and Budget: 47 CFR §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, 8.222.

⁴ See 47 C.F.R. § 1.1200(a).

⁵ *Public Safety and Homeland Security Bureau Requests Comment on the Implementation of the Cybersecurity Labeling for Internet of Things Program*, PS Docket No. 23-239, Public Notice, DA 24-617 (June 27, 2024) (*ex parte* permit-but-disclose).

presentations addressing the merits of decisions made in the Order, remain permit but disclose.⁶ Significant private/public collaboration is necessary to stand up this voluntary program and we find that it is in the public interest for the Bureau to accord exempt status to these communications in order to foster the free exchange of ideas.

For further information regarding this proceeding, please contact Tara B. Shostek, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at (202) 418-8130 or Tara.Shostek@fcc.gov.

⁶ See 47 C.F.R. § 1.1206.



PUBLIC NOTICE

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DA 24-738

Released: July 30, 2024

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 24-127

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

Interconnected VoIP Numbering Authorization Application filed by Bandwidth Inc. Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 24-127 (April 16, 2024), Public Notice, DA 24-631 (WCB July 1, 2024).

Effective Grant Date: August 1, 2024

Please contact DAA@fcc.gov, Margoux Newman at Margoux.Newman@fcc.gov or Jordan Marie Reth at Jordan.Reth@fcc.gov for further information.

-FCC-

¹ See 47 CFR § 52.15(g)(3).



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DA 24-739

Released: July 30, 2024

**INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION OF
RGTN USA, INC. GRANTED PURSUANT TO
SECTION 52.15(g) OF THE COMMISSION'S RULES**

WC Docket No. 23-335

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

Due to the foreign ownership of the Applicant, 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.² The Bureau referred the Application on December 15, 2023, 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.³ On January 2, 2024, 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 RGTN USA, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 23-335 (filed Nov. 17, 2023), <https://www.fcc.gov/ecfs/document/111754529215/1> (*Application*); Supplement of RGTN USA, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 23-335 (filed Dec. 7, 2023), <https://www.fcc.gov/ecfs/document/12072721728834/1> (*Supplement*); 47 CFR § 52.15(g)(3).

² RGTN disclosed that it has 10% or greater foreign ownership. See *Application*, Exh. D. (listing country of citizenship as the Netherlands, with 100% ownership via Leonardus Aldegonda Johannes Herps, CEO, and Katrin Herps-Oskomic, Shareholder); 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); see also 47 CFR § 52.15(g)(3).

³ See *Interconnected VoIP Numbering Authorization Application Filed by RGTN USA, Inc. Pursuant to Section 52.15(g)(3) of the Commission's Rules, Non-Streamlined Pleading Cycle Established*, WC Docket No. 23-335, Public Notice at 1, (WCB 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/12150493101190> (*Accepted for Filing Public Notice*). No party filed comments in opposition to a grant of the Application.

ownership and requested that the Commission defer action on the Application.⁴ As requested, we deferred action on the Application.⁵

On March 21, 2024, 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.⁶ On June 27, 2024, the National Telecommunications and Information Administration, on behalf of the Committee, filed a letter stating that the Committee has reviewed the Application and “has no recommendation at this time to the Commission approving the [A]pplication and no objection to the Commission granting it.”⁷

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 RGTN’s Application for direct access to numbering resources.

Effective Grant Date: July 30, 2024

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

For further information, please contact Jordan M. Reth, Competition Policy Division, Wireline Competition Bureau at Jordan.Reth@fcc.gov.

- FCC -

⁴ See Letter from Nadia Asanchev, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Jan. 2, 2024) (on file at <https://www.fcc.gov/ecfs/document/10102097467806/1>).

⁵ See *id.* at 2.

⁶ See Letter from Nadia Asanchev, 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. 21, 2024) (on file at <https://www.fcc.gov/ecfs/document/10321947518187/1>).

⁷ See Letter from Stephanie Weiner, Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, to Troy Tanner, Acting Chief, Office of International Affairs, Federal Communications Commission at 1 (Jun. 27, 2024) (on file <https://www.fcc.gov/ecfs/document/10627135365879/1>).



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DA 24-740

Released: July 30, 2024

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

WC Docket No. 11-42

By this Public Notice, the Wireline Competition Bureau (Bureau) announces updated minimum service standards for Lifeline-supported services as required by the *2016 Lifeline Order*.¹ The *2016 Lifeline Order* established minimum service standards for certain Lifeline-supported services and established annual increases in those standards either in the Commission's rules or pursuant to calculations set out in the Order and the Commission's rules.² Accordingly, we announce the newly calculated minimum service standard for fixed broadband data usage allowance. This standard will continue until December 1, 2025. Additionally, we announce that the budget for federal universal service support for the Lifeline program for calendar year 2025 will be \$2,892,617,627.³

Mobile broadband minimum service standard. On July 3, 2024, the Bureau extended for an additional year the waiver pausing the increase in the Lifeline minimum service standards for mobile broadband data capacity.⁴ As such, the standard will continue to be 4.5 GB per month until at least December 1, 2025.

Fixed broadband minimum service standard for data usage allowance. Pursuant to the *2016 Lifeline Order*, beginning December 1, 2024, the Lifeline minimum service standard for fixed broadband data usage will be 1230 GB per month, as calculated from the 2024 Urban Rate Survey data.⁵

Mobile voice telephony minimum service standard. The *2016 Lifeline Order* established an automatic update to the Lifeline minimum service standard for mobile voice service through November 30, 2018.⁶ Accordingly, pursuant to the *2016 Lifeline Order*, on December 1, 2024, the Lifeline minimum service standard for mobile voice service will remain unchanged, at 1000 minutes per month.⁷

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3989-3997, paras. 73-98 (2016) (*2016 Lifeline Order*); 47 CFR § 54.408(c).

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

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

⁴ See *Lifeline and Link Up Reform and Modernization et al.*, Docket No. 11-42, Order, DA 24-642, paras. 1-2, 11, 14-16 (WCB 2024).

⁵ See 47 CFR § 54.408(c)(1)(ii); *2016 Lifeline Order*, 31 FCC Rcd at 3994, para. 90; FCC, *Urban Rate Survey Data & Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (last visited July 12, 2024).

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

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

Annual budget. The *2016 Lifeline Order* adopted an initial budget of \$2.25 billion for the calendar year beginning January 1, 2017.⁸ The *2016 Order* also stated that the budget amount will be indexed to inflation in accordance with the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics.⁹ To perform this calculation, the Bureau used the annual percent change factor for the preceding year (here, 2023) to the year in which the calculation is being performed.¹⁰ Based on this calculation, the indexed budget for federal universal service support for the Lifeline program for the calendar year beginning January 1, 2024 was \$2,778,691,284,¹¹ and the indexed budget for the calendar year beginning January 1, 2025 will be \$2,892,617,627.

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

- FCC -

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

⁹ 47 CFR § 54.423(a)(2); *2016 Lifeline Order*, 31 FCC Rcd at 4110, para. 403.

¹⁰ See United States Department of Labor, Bureau of Labor Statistics, *Consumer Price-Index All Urban Consumer U.S. City Average, Not Seasonally Adjusted, Series CUUR0000SA0* (last visited July 10, 2024), https://data.bls.gov/timeseries/CUUR0000SA0?output_view=pct_12mths (annual average 12-month percent change for 2023 was 4.1%).

¹¹ *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards & Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, 38 FCC Rcd 6536, 6537 (WCB 2023).



PUBLIC NOTICE

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DA 24-741
Released: July 31, 2024

**GRANT OF DOMESTIC SECTION 214 APPLICATION FOR THE ACQUISITION OF
CONNECT AMERICA FUND PHASE II AUCTION FUNDING AND RELATED BUILDOUT
AND SERVICE OBLIGATIONS OF
RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC. BY EMPOWER BROADBAND, INC.
AND LIMITED RELIEF FOR EMPOWER FROM CERTAIN CAF PHASE II AUCTION
COMPLIANCE AND LETTER OF CREDIT RULES**

WC Docket No. 24-145

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by RiverStreet Communications of Virginia, Inc. (RiverStreet) and EMPOWER Broadband, Inc. (EMPOWER) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), and sections 63.03-63.04 of the Commission's rules,¹ requesting consent for the acquisition of RiverStreet's Connect America Fund Phase II Auction (CAF II Auction) support and related buildout and service obligations associated with certain designated Census Block Groups (CBGs) in the Commonwealth of Virginia (Assigned CBGs) by EMPOWER.²

In Section II of this Public Notice, we address EMPOWER's requests to waive certain CAF II Auction obligations and requirements to which EMPOWER will be subject upon authorization. More specifically, we deny EMPOWER's request to waive and extend three deployment milestones by which CAF II Auction support recipients must deploy service to a specific percentage of supported locations, but we modify certain consequences of noncompliance with those milestones.³ Second, we grant EMPOWER's request for a limited waiver of certain CAF II Auction Letter of Credit (LOC) rules.⁴

¹ See 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

² See Section I *infra*; Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc., WC Docket No. 24-145 (filed May 14, 2024) (Application). Applicants provide a list of each of the CBGs included in the Assigned CBGs. See Application, Exh. A (Census Block Groups, Location Figures and 10 Year CAF II Funding Amounts Applicants Propose to Assign from RiverStreet Communications of Virginia, Inc. to EMPOWER Broadband, Inc.). On May 15, 2024, Applicants filed a supplement to their domestic section 214 application. Supplement to Joint Domestic 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations, WC Docket No. 24-145 (filed May 15, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, applications.

³ Application at 15-18; 47 CFR §§ 54.310(c), 54.320(d)(i)-(iv).

⁴ On July 5, 2024, EMPOWER filed a request for limited waiver of section 54.315(c)(1) of the Commission's rules. See 47 CFR §§ 54.315(c)(1); Further Supplement to Joint Domestic 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations, Request for Limited Waiver

On May 20, 2024, the Bureau released a Public Notice seeking comment on the Application and EMPOWER's waiver request included in the Application.⁵ The Bureau did not receive comments or petitions in opposition to the Application or EMPOWER's waiver requests.

I. DOMESTIC SECTION 214 APPLICATION

Applicants

RiverStreet, a Virginia corporation, provides service as a competitive local exchange carrier (LEC) in the following Virginia counties: Bedford, Brunswick, Campbell, Charlotte, King and Queen, and Pittsylvania. RiverStreet serves Internet subscribers in Pittsylvania, Campbell, Bedford, Franklin, Halifax, Charlotte, Prince Edward, King and Queen, Caroline, Essex, Middlesex, King William, Nelson, Albemarle, City of Danville (Pittsylvania), Pittsylvania, Charles City County, City of Emporia (Greensville County), Halifax, City of South Boston (Halifax), and City of Martinsville (Henry).⁶ RiverStreet has been designated as an Eligible Telecommunications Carrier (ETC) in Virginia pursuant to section 214(e) of the Act.⁷ On July 15, 2019, the Bureau authorized RiverStreet to receive \$32,140,887.10 in CAF II Auction support to serve 13,518 locations in Virginia.⁸ RiverStreet does not have any customers in the Assigned CBGs.⁹

EMPOWER, a Virginia corporation, provides communications services in south central Virginia in the counties of Brunswick, Charlotte, Emporia, Greensville, Halifax, Lunenburg, Mecklenburg, Pittsylvania, Southampton, and Sussex.¹⁰ EMPOWER is a designated ETC pursuant to section 214(e) of the Act.¹¹ On June 10, 2019, the Bureau authorized EMPOWER to receive \$1,868,320.00 in CAF II Auction support in Virginia to serve 838 locations.¹² EMPOWER is a wholly-owned subsidiary of

of the Commission's Rules, WC Docket No. 24-145 at 3 (filed July 5, 2024) (Further Supplement and Waiver Request).

⁵ See *Domestic Section 214 Application Filed for the Acquisition of Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by Empower Broadband*, WC Docket No. 24-145, Public Notice, DA 24-477 (WCB rel. May 20, 2024) (*Public Notice*). In the *Public Notice*, the Bureau also granted RiverStreet a limited waiver of the CAF II Auction non-compliance Tier 4 (T4) support recovery deadline, so that RiverStreet had until June 30, 2024, to pay the required support recovery amount or certify to offering service to enough locations to move into a lower non-compliance tier before the Bureau would direct the Universal Service Administrative Company (USAC) to draw on RiverStreet's letter of credit. *Public Notice*, Section III (RiverStreet's Request for Waiver of the Non-Compliance Tier 4 Support Recovery Deadline) at 5-8.

⁶ Application at 2-3. Applicants provide ownership and affiliate information related to RiverStreet in their Application. *Id.* at 3-5, 12. Applicants state that RiverStreet currently participates in the Commission's Lifeline program and participated in the Affordable Connectivity Program. *Id.* at 8. We note that at this time of this Public Notice, due to a lack of additional funding from Congress, the Affordable Connectivity Program has ended.

⁷ 47 U.S.C. § 214(e); Application at 3.

⁸ *Id.*; *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019) (*CAF II Public Notice*). Applicants note that RiverStreet also receives Rural Digital Opportunity Fund (RDOF) support. Application at 3. Specifically, on February 14, 2022, the Bureau authorized RiverStreet to receive \$39,777,711.20 in RDOF support in Virginia to serve 24,213 locations. See *Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 1617, Attach. A (WCB/OEA 2022) (*RDOF Public Notice*).

⁹ Application at 2.

¹⁰ *Id.* at 5-6. Applicants state that EMPOWER participates in the Commission's Lifeline and, at the time of Application filing, the Affordable Connectivity Program, and would continue to participate in both programs. *Id.* at 8.

¹¹ 47 U.S.C. § 214(e); see also Application at 6.

Mecklenburg Electric Cooperative (Mecklenburg EC), a Virginia corporation and rural electric cooperative that is owned by its members.¹³ Applicants state that neither EMPOWER, EMPOWER TELECOM, nor Mecklenburg EC holds a 10% or greater interest in any other provider of domestic telecommunications services.¹⁴

Description of the Proposed Transaction

Pursuant to the terms of the proposed transaction, Applicants entered into an agreement on April 25, 2024, subject to Commission approval, whereby RiverStreet will assign the CAF II Auction obligations for the Assigned CBGs to EMPOWER, who has agreed to assume and accept all future CAF II Auction compliance obligations for the Assigned CBGs.¹⁵ Applicants state that, for the Assigned CBGs, EMPOWER will receive a total of \$8,173,842.00 in annual CAF II Auction support for 3,757 locations.¹⁶ In addition, RiverStreet will pay to EMPOWER an amount equal to all CAF II Auction support received to date by RiverStreet in the Assigned CBGs at closing.¹⁷ EMPOWER is not acquiring any of RiverStreet's infrastructure assets or customers.¹⁸

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.¹⁹ We then employ a

¹² See *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019). On October 14, 2021, the Bureau also authorized EMPOWER to receive \$5,053,914.90 in RDOF support in Virginia to serve 3,602 locations. See *Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 36 FCC Rcd 14528, 14526, Attach. A (WCB 2021).

¹³ Application at 6. Applicants state that no single member holds a 10% or greater interest in Mecklenburg EC. *Id.* Mecklenburg EC wholly owns EMPOWER TELECOM, Inc. (EMPOWER TELECOM), a Virginia corporation, that provides services as a rural incumbent LEC in south central Virginia. *Id.* at 7.

¹⁴ Supplement at 3.

¹⁵ *Id.* at 7.

¹⁶ Application at 7.

¹⁷ *Id.* EMPOWER filed, contemporaneously with the Application, a petition seeking FCC expansion of its ETC designation to include the CAF II Auction-funded census blocks in the Assigned CBGs which, if granted, will make EMPOWER eligible to receive CAF II Auction and federal Lifeline support in the Assigned CBGs. *Id.* In this petition, EMPOWER also seeks a Lifeline-only ETC designation in additional areas in south central Virginia. *Id.* The Bureau placed this petition on public notice on June 12, 2024, with a comment deadline of July 12, 2024, and a reply deadline of July 29, 2024. *Wireline Competition Bureau Seeks Comment on EMPOWER Broadband, Inc.'s Petition for Expansion of Its Eligible Telecommunications Carrier Designation*, WC Docket No. 09-197, Public Notice, DA 24-561 (WCB June 12, 2024).

¹⁸ Application at 2.

¹⁹ See, e.g., *Application of Verizon Communications Inc. a 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, 17001, para. 21 (Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and*

balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²¹

We find that there are no potential public interest harms identified in the record. To begin with, the proposed transaction will not result in a reduction of competition. RiverStreet does not have any subscribers in the Assigned CBGs.²² Accordingly, the transaction will not result in any loss or impairment of service for any subscribers in the Assigned CBGs, and we therefore expect no potential harm to existing customers or competition resulting from the proposed transaction. Applicants state that EMPOWER has both the necessary industry experience and requisite financial means to take on the responsibility of deploying CAF II Auction-supported voice and broadband service in the CAF II Auction-funded census blocks located within the Assigned CBGs.²³ Applicants assert the transaction will not result in any adverse alteration to the buildout plans that EMPOWER submitted to the Commission to be authorized to receive CAF II Auction support.²⁴ Applicants state that there will be no changes in the fiber-to-the-home technology being used by EMPOWER in executing its CAF II Auction buildout plans and that EMPOWER will continue to deploy fiber technology capable of providing symmetrical gigabit-tier speeds in meeting its CAF II Auction buildout milestones.²⁵ Applicants further note that EMPOWER is not taking on any debt repayment obligations or otherwise increasing substantially its costs to deploy service, and will continue to have the same access to financial resources following consummation of the transaction.²⁶ As a result, 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

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*)).

²⁰ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, 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).

²¹ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, 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).

²² Application at 2.

²³ *Id.* at 9. Applicants note that the Commission has already reviewed and approved EMPOWER's CAF II Auction and Rural Digital Opportunity Fund (RDOF) long-form applications and authorized EMPOWER to receive CAF II Auction and RDOF support. *Id.* Applicants state that they do not anticipate that any changes to EMPOWER's operations or other circumstances might occur in the wake of the transaction that could compromise Applicants' ability to meet their service obligations. *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.

likelihood than when harms are present.²⁹

Applicants assert that the proposed transaction will serve the public interest because it will accelerate EMPOWER's ongoing efforts to expand broadband service to unserved areas.³⁰ Applicants believe that customers in the Assigned CBGs would be best served by EMPOWER because of the overlap of the Assigned CBG areas with the electric service territory of Mecklenburg EC, the proximity of the Assigned CBG areas to EMPOWER's broadband service area, and considering EMPOWER's existing operations, resources, and infrastructure.³¹ Applicants assert that EMPOWER can achieve economies of scale and leverage its labor force, infrastructure, and operational capabilities to build out the Assigned CBGs rapidly and cost-effectively as it expands its broadband operations.³² Given that EMPOWER is prepared to devote additional capital to accelerate facilities-based service offerings,³³ we find it likely that the proposed transaction would result in some public interest benefits, including the deployment of facilities in the acquired CAF II Auction area more quickly than if the transaction did not take place. 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.

II. EMPOWER'S WAIVER REQUESTS

We deny EMPOWER's request to waive and extend, as of its authorization, the 40%, 60% and 80% CAF II Auction service milestones but modify certain consequences for noncompliance with these milestones.³⁴ RiverStreet is currently in Tier 3 (T3) non-compliance status in Virginia and has not deployed broadband to any locations in the CBGs being transferred to EMPOWER. Therefore, EMPOWER will be in a non-compliance tier at the time the transaction closes.³⁵ Upon being authorized in the transferred CBGs, EMPOWER will receive support consistent with the percentages set forth in section 54.320(d)(i)-(v) scaled to the level of noncompliance,³⁶ and will be subject to quarterly reporting obligations until its noncompliance status is 5% or less.³⁷ However, we permit EMPOWER to remain in

²⁹ *See id.*

³⁰ Application at 10.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 7.

³⁴ Application at 15, n.16 (seeking an extension of the 40% and 60% milestones until December 31, 2024, and the 80% milestone until June 30, 2025). 47 CFR § 54.310(c) (providing that CAF II Auction support recipients must complete deployment to 40% of its supported locations by December 31, 2022, 60% of supported locations December 31, 2023, 80% of supported locations by December 31, 2024, and 100% of supported locations by December 31, 2025). EMPOWER also seeks an extension of the deadlines to certify compliance with the extended milestones. Application at 15, n.17; 47 CFR § 54.316(b)(4) (providing that CAF II Auction support recipient recipients must certify by March 1st of every year following a service milestone, that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations). Because we deny the milestone extension requests and therefore, EMPOWER cannot certify compliance with these milestones, the related requests for extension of these certifications are moot. Further, because EMPOWER has provided notice of its post-authorization noncompliance with post-authorization milestones in its Application, the truth and accuracy of which the Chief Executive Office of EMPOWER certifies, under penalty of perjury, we find that EMPOWER has already provided the requisite notice of noncompliance as required by section 54.320(d) of the Commission's rules. Application at 22 (Certification of John C. Lee, Jr., President and Chief Executive Office, EMPOWER Broadband, Inc. (dated May 14, 2024)); 47 CFR § 54.320(d).

³⁵ We note that EMPOWER can choose to combine all of its CAF II Auction areas in Virginia and calculate compliance on a state-wide basis. However, because the number of locations in EMPOWER's current CAF II Auction areas in Virginia is significantly smaller than the number of locations in the CBGs being acquired from RiverStreet, EMPOWER will not be in compliance in Virginia even if the areas are combined.

³⁶ 47 CFR § 54.320(d)(1)(i)-(iv).

noncompliance status without recovering any support until December 31, 2025.³⁸ As requested by EMPOWER, we also waive the pre-authorization withholding of support from RiverStreet for its noncompliance with prior milestones, thus permitting EMPOWER to receive all support that would have been disbursed to RiverStreet for the assigned CBGs had it complied with all requirements.³⁹ In addition, we permit EMPOWER to maintain a LOC securing support equal to three years of support as specified in the RDOF LOC rules, rather than the six years of support specified in the CAF II Auction LOC rules.⁴⁰

Discussion

Generally, the Commission's rules may be waived for good cause shown.⁴¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁴³ In general, the Commission does "not expect to routinely grant waiver requests" of deployment milestones.⁴⁴

EMPOWER seeks post-authorization relief from the withholding and reporting consequences for noncompliance with two past deployment milestones consistent with a request to extend the 40% and 60% milestones until December 31, 2024, and the 80% milestone until June 30, 2025.⁴⁵ If these waiver requests are not granted, EMPOWER will, at the time of authorization, have a compliance gap likely exceeding 50% of the number of locations to which it must deploy service to meet the 60% milestone.⁴⁶ If this compliance gap continues for more than six months, EMPOWER would be subject to support recovery.⁴⁷ For the reasons explained below, we waive any support recovery for noncompliance until December 31, 2025.⁴⁸

We find that EMPOWER has not demonstrated good cause to grant its requested waiver of the two prior deployment milestones and the withholding and reporting consequences of its post-

³⁷ *Id.* § 54.320(d)(1)(i).

³⁸ *Id.* § 54.320(d)(1)(iv).

³⁹ Application at 15, 17. On January 17, 2023, RiverStreet notified the Bureau that it had missed the 40% service milestone and detailed its plan for coming into compliance. Letter from Eric S. Cramer, President/CEO, RiverStreet Management Services LLC to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al. (filed Jan. 17, 2023). Although the Bureau has not and will not recover support from RiverStreet consistent with its waiver of the deadline for repaying such support and RiverStreet's move into a lower noncompliance tier (T3), the Bureau has withheld a percentage of support disbursements in accordance with section 54.320(d)(1) for its noncompliance with the 40% milestone for more than 6 months. See *Public Notice* at 7-8; 47 CFR § 54.310(d)(1)(iv)(B).

⁴⁰ Further Supplement and Waiver Request at 1-6. 47 CFR §§ 54.315(c)(1) (requiring CAF II Auction support recipients to maintain a LOC in an amount equal to, at a minimum, the amount of already disbursed support and support that will be disbursed in the coming year); *id.* at § 54.804(c)(v)(ii) (requiring RDOF support recipients to maintain a LOC equal to three years of support when noncompliant with more than one deployment milestone).

⁴¹ 47 CFR § 1.3.

⁴² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴³ *Id.*

⁴⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15660, para. 40 & n.93 (2014).

⁴⁵ Application at 15-18. 47 CFR § 54.310(c).

⁴⁶ EMPOWER takes no assets from RiverStreet. Application at 2, 15 n.16.

⁴⁷ 47 CFR § 54.320(d)(1)(iv)(B).

⁴⁸ *Id.*

authorization non-compliance status.⁴⁹ We also deny the requested extension of the 80% milestone.⁵⁰ Accordingly and consistent with our precedent, as of its authorization to receive the support associated with the assigned CBGs, EMPOWER assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact its ability to meet its present and future obligations.⁵¹ This approach helps ensure that parties do not enter lightly into high cost support transactions without completing their requisite level of due diligence and without a plan to timely resolve current noncompliance and meet future requirements.⁵² Even if, as EMPOWER explains, interim withholding consequences would make future deployment more expensive in the short run, EMPOWER's pre-transaction due diligence should and did take into account these consequences and the availability of other funding.⁵³ Moreover, long-

⁴⁹ Application at 15-18. We note that this decision does not conflict with the Bureau's prior decision in the *Atlink Transfer and Waiver Order*, where the Bureau waived two deployment milestones (40%, 60% milestones) that, at the time of Atlink's authorization, had yet to occur. *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 Nos. 22-55, 10-90, AU Docket No. 17-182, 37 FCC Rcd 7406, 7413-16 (WCB 2022) (*Atlink Transfer and Waiver Order*). Because these waivers pertained to future milestones, Atlink would not have been immediately noncompliant as of its post-transaction authorization and was not seeking relief from the post-transaction, ongoing obligation to have met a milestone. Instead, Atlink sought prospective relief from any withholding or recovery consequences so as to allow it the resources to meet future milestones. Moreover, that decision reflected circumstances created by an economic crisis threatening the Otoe-Missouria Tribe of Oklahoma. *See id.* at 7414.

⁵⁰ Although in the *Atlink Transfer and Waiver Order*, the Bureau did extend two future milestones, there were also differentiating circumstances in that case warranting different treatment of EMPOWER's request for extension of the 80% milestone. *Atlink Transfer and Waiver Order*, 37 FCC Rcd 7406. As discussed in detail below, EMPOWER will receive all support that would have been disbursed to cover deployments in the assigned CBGs as of its authorization, which will constitute all but a six month period (at most) of support payments preceding the upcoming 80% milestone. *See infra* page 9. In addition, the 80% milestone occurs within a year of the 100% milestone, and the Commission's interest in ensuring full deployment in these circumstances outweighs any limited and temporary financial burden that EMPOWER will face pending its full compliance. *See* 47 CFR § 54.310(c) (providing that CAF II Auction support recipients must complete deployment to 100% of supported locations by December 31, 2025).

⁵¹ *See, e.g., 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*, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 6158, 6159 (WCB 2022) (stating that as a condition of the 214 authorization, a transferee "assumes responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions on the ground in the Assigned Census Blocks that could negatively impact [its] ability to meet these obligations in the future," and "must assume all risk and consequences of noncompliance with CAF Phase II auction requirements ...").

⁵² *See Connect America Fund et al., WC Docket No. 10-90 et al., Order on Reconsideration*, 33 FCC Rcd 1380, 1390, para. 25 (2018) ("emphasiz[ing] that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications."); *see also id.* at 5966, para. 47 (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

⁵³ Application at 16-18 (explaining that EMPOWER "is prepared to dedicate considerable administrative and financial resources to meet deployment milestones applicable to the Assigned CBGs, but the receipt of CAF II support awarded for these Assigned CBGs would make Assignee's ability to meet its proposed deadlines easier"). We note that because EMPOWER anticipates deploying service to 60% of its required locations no later than the 80% milestone deadline (December 31, 2024), or 75% of the locations that it must serve to meet the 80% milestone, its withholding status will be reduced to T3 and it will receive 75% of its total month payments at this time. *See* Application at 16-17; 47 CFR § 54.320(d)(1)(iii). EMPOWER's new combined location obligation will be 4,595 locations. When it serves 60% of those locations, it will be serving 2,757 locations. It will meet its 80% milestone

standing Commission precedent has repeatedly held that absent special circumstances, financial hardship in meeting obligations is insufficient to justify waiver.⁵⁴ For these reasons, we conclude that EMPOWER has failed to show special circumstances warranting post-authorization deviation from ongoing program requirements and certain related consequences, including the withholding of support and quarterly reporting. Moreover, waiver of these requirements would not serve the public interest because it would reduce the incentive that withheld support serves to encourage carriers to come back into compliance with broadband deployment milestones.

We do, however, agree that waiver of some of our rules is warranted. Unique circumstances in this case prevented RiverStreet from deploying broadband in these CBGs and raised the possibility of duplicative federal and state support in these areas. Based upon coordination with the Virginia Department of Housing and Community Development (Virginia DHCD), the Bureau has determined that waiver of our rules to allow EMPOWER to receive, immediately upon authorization, any withheld support associated with the assigned CBGs and extend the deadline for any support recovery from noncompliance until December 31, 2025 will result in the swiftest deployment of broadband services in these areas while ensuring the efficient and non-duplicative use of federal and state broadband funds.⁵⁵ This waiver will ensure that EMPOWER has sufficient funding to undertake deployment in the assigned CBGs while providing EMPOWER with an incentive to come into compliance with the deployment milestones as soon as possible.

We also grant EMPOWER's request to waive the LOC rules, allowing it to secure a post-authorization LOC equal to three years of support rather than the six years of support.⁵⁶ In 2023, the Commission declined to extend to noncompliant CAF II Auction support recipients a long-standing waiver of CAF II Auction LOC rules in favor of the less onerous RDOF LOC rules.⁵⁷ In so limiting this waiver, the Commission reasoned that in situations involving noncompliant support recipients, the Commission is "most likely to need to draw on the LOCs of the CAF II support recipients," and noted that the "LOCs exist to protect the Universal Service Fund and allow for more efficient recovery of funds, when necessary."⁵⁸ While there may be some marginally increased risk that EMPOWER will not meet future deployment obligations when compared with fully compliant CAF II Auction support recipients, this risk is significantly attenuated given EMPOWER has demonstrated its diligence and general effectiveness in meeting requirements by fully complying with its current obligations.⁵⁹ Further, there is

when it serves 3,676 locations. Accordingly, EMPOWER will be serving 75% of its total location requirement as of the 80% milestone (2,757/4,595 locations) if it reaches the service commitment timeline it makes in its Application, and will enter T3 status.

⁵⁴ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Advantage Cellular Systems, Inc. Petition for Waiver of the FCC's Universal Service Rules*, Order on Reconsideration, WC Docket No. 08-71, CC Docket No. 95-45, Order, 31 FCC Rcd 3753, 3757, para. 11 (WCB 2016) ("If we were to hold that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support, that would effectively negate the public interest requirement, as this criterion would be met any time failure to meet a filing deadline resulted in reduced support."); *Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542 para. 8 (WCB 2014).

⁵⁵ 47 CFR § 54.320(d)(1)(iv)(B).

⁵⁶ Compare 47 CFR § 54.315(c)(1) with 47 CFR § 54.804(c)(v)(ii). *2023 CAF Phase II Auction Letter of Credit Waiver Order*, at 4, paras. 9-10.

⁵⁷ See *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 35 FCC Rcd 6556 (2020) (granting waiver of the CAF II Auction LOC rules in favor of the RDOF LOC rules); *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 36 FCC Rcd 16633 (WCB 2021); *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 37 FCC Rcd 14592 (WCB 2022) (extending the waiver through 2023); *Connect America Fund, et al.*, WC Docket No. et al., Order, DA 23-1140 at 3, para. 9 (WCB Dec. 6, 2023) (extending the waiver through 2024 but limiting it to fully compliant support recipients) (*2023 LOC Waiver Extension Order*).

⁵⁸ *2023 LOC Waiver Extension Order* at 3, para. 9.

no evidence that the unique combination of factors that resulted in RiverStreet's failure to deploy service in the assigned CBGs will impact EMPOWER's ability to deploy service in this area.

Accordingly, we conclude that special circumstances in this situation warrant waiver of the CAF II Auction LOC rules in favor of the RDOF LOC rules to permit EMPOWER to maintain a letter of credit valued at three years of support until USAC verifies compliance with the final broadband deployment milestone. We also find that this waiver serves the public interest as it will allow EMPOWER to better allocate resources to operate successfully and fulfill its deployment obligations.⁶⁰

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.⁶¹

Pursuant to sections 1, 4(i), 5(c), and 254 of the Act, 47 U.S.C. §§ 151, 154(i), 155(c), 254,⁶² and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR. §§ 0.91, 0.291, 1.3,⁶³ the Bureau hereby grants in part, denies in part, and dismisses in part, EMPOWER's petition for limited waiver of sections 54.310(c), 54.316(b)(4), and 54.320(d)(i)-(iv) of the Commission's rules, 47 CFR §§ 54.310(c), 54.316(b)(4), and 54.320(d)(i)-(iv),⁶⁴ to the extent described herein, and grants in full EMPOWER Broadband, Inc.'s request for limited waiver of section 54.315(c)(1) of the Commission's rules, 47 CFR § 54.315(c)(1).⁶⁵

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.⁶⁶ 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.⁶⁷

For further information regarding the Application discussed in Section I, please contact Gregory Kwan, Wireline Competition Bureau, at gregory.kwan@fcc.gov. For further information regarding the waivers discussed in Section II, please contact Nissa Laughner, Wireline Competition Bureau, at nissa.laughner@fcc.gov.

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⁵⁹ Application at 16 (stating that EMPOWER is "on track" to meeting its current 80% deployment milestone).

⁶⁰ See *id.* at 3, para. 8. See also Further Supplement and Waiver Request at 5 ("Granting the requested waiver will promote these CAF II policies by better enabling EMPOWER Broadband to use its available capital to bring advanced broadband services to rural Virginia communities and consumers"); *id.* at 4-6.

⁶¹ 47 U.S.C. § 214; 47 CFR §§ 0.91, 0.291, 63.03, and 63.04. See *CAF II Public Notice*, 34 FCC Rcd at 5967-71; *RDOF Public Notice*, 37 FCC Rcd at 16-17.

⁶² 47 U.S.C. §§ 151, 154(i), 155(c), 254.

⁶³ *Id.* §§ 0.91, 0.291, 1.3

⁶⁴ *Id.* §§ 54.310(c), 54.316(b)(4), 54.320(d)(i)-(iv).

⁶⁵ *Id.* § 54.315(c)(1).

⁶⁶ 47 CFR § 1.103. We direct Applicants to transmit a copy of this Public Notice to the Universal Service Administrative Company. We further direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 24-145 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

⁶⁷ 47 CFR §§ 1.106, 1.115.



PUBLIC NOTICE

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DA 24-742

Released: July 31, 2024

STREAMLINED RESOLUTION OF REQUESTS UNDER THE SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM

WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, pursuant to delegated authority, the following petitions requesting to extend certain deadlines under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).

As directed by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks Act), the Commission established the Reimbursement Program to reimburse providers of advanced communications service with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk, i.e., communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE), that were obtained by providers on or before June 30, 2020.¹ The Reimbursement Program is funded by a \$1.9 billion congressional appropriation,² which is less than the \$5.6 billion in collective funds requested by applicants to the program.³ Because demand exceeded available funding, the Secure Networks Act

¹ Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(a)-(c), 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609). The Commission adopted rules implementing the Secure Networks Act on December 10, 2020. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). On July 13, 2021, the Commission amended its rules, consistent with amendments to the Secure Networks Act included in the Consolidated Appropriations Act, 2021. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, 11959, para. 2 (2021) (*2021 Supply Chain Order*). The Commission later clarified that, for purposes of the Reimbursement Program, covered communications equipment or services are limited to the communications equipment or services produced or provided by Huawei or ZTE that were obtained by providers on or before June 30, 2020. See *2021 Supply Chain Order*, 36 FCC Rcd at 11959, 11965, paras. 2 and 18; see also generally *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020).

² Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 906, 134 Stat. 1182 (2020) (CAA). Section 906 provides that “[t]here is appropriated to the Federal Communications Commission, out of amounts in the Treasury not otherwise appropriated, for fiscal year 2021, to remain available until expended— . . . (2) \$1,900,000,000 to carry out the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1601 et seq.), of which \$1,895,000,000 shall be used to carry out the program established under section 4 of that Act (47 U.S.C. 1603).”

³ See *Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRIP Granted Applications Public Notice*) (explaining that “[e]ach applicant was required to include in its application estimates for the costs that it will reasonably incur for the permanent removal, replacement, (continued....)

required the Bureau to implement a prioritization scheme where funding was allocated first to approved applicants with 2,000,000 or fewer customers (Priority 1 applicants).⁴ Because demand from Priority 1 applicants alone exceeded the congressional appropriation, Commission rules required that allocations to Priority 1 applicants be pro-rated on an equal basis.⁵ Consequently, recipients received funding allocations for approximately 39.5% of their reasonable and supported estimated costs for removing, replacing, and disposing of covered communications equipment and services.⁶

Reimbursement Program recipients must complete the removal, replacement, and disposal of covered communications equipment and services within one year from the initial disbursement of funds to the recipient.⁷ Pursuant to section 4(d)(6)(C) of the Secure Networks Act, the Commission may grant recipients extensions of this term on an individual basis.⁸ The Commission delegated authority to the Bureau to grant or deny individual petitions for an extension of a recipient's term.⁹ The Bureau "may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term" and "may grant more than one extension request to a recipient if circumstances warrant."¹⁰ This can occur, for example, due to the lack of funding to fully reimburse recipients, which can require recipients to revise their plans in ways that cause them to need more time to remove, replace, and dispose of covered equipment, in addition to delays in receiving the necessary equipment to replace their covered equipment, which likewise can require a recipient to need more time to meet its obligations under the Reimbursement Program.¹¹

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and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately \$5.6 billion in gross program support").

⁴ See 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *SCRIP Granted Applications Public Notice* at 2-3.

⁵ The Commission's rules provide that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the [Bureau] will pro-rate the available funding among all eligible providers in that prioritization category." 47 CFR § 1.50004(f)(1); see also 47 U.S.C. § 1603(d)(5)(A) ("[T]he Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.").

⁶ See 47 CFR § 1.50004(f)(1); see also *SCRIP Granted Applications Public Notice* at 2-3.

⁷ 47 U.S.C. § 1603(d)(6)(A); 47 CFR § 1.50004(h).

⁸ See 47 U.S.C. § 1603(d)(6)(C).

⁹ See 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2) ("Individual extensions. Prior to the expiration of the removal, replacement and disposal term, a Reimbursement Program recipient may petition the Wireline Competition Bureau for an extension of the term. The Wireline Competition Bureau may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.").

¹⁰ 47 CFR § 1.50004(h)(2); see also *2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173 and n.501.

¹¹ See, e.g., *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-875, para. 7 (WCB Sept. 22, 2023) (*Stealth Extension Order*) (granting an extension based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938, paras. 12-16 (WCB Oct. 10, 2023) (*WorldCell et al. Extension Order*) (granting extensions based in both funding issues and supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1016, paras. 12-16 (WCB Oct. 27, 2023) (*Point/SI Wireless Extension Order*) (granting extensions based on both funding issues and supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1110, paras. 8-11 (WCB Nov. 28, 2023) (*Triangle Telephone/Triangle Communication Extension Order*) (granting extension of time requests by Triangle Telephone Cooperative Association Inc. and Triangle

(continued....)

The Bureau strongly encourages recipients that intend to file a petition for an extension to do so as promptly as possible after determining that their circumstances meet the standard for an extension established in the statute and the Commission's implementing rules, and well in advance of the recipient's deadline, so the Bureau is able to fully consider and grant or deny the petition before the recipient's term expires. We remind recipients that requests for term extensions should specify both the specific grounds for the request and the specific facts and circumstances on which the recipient relies in asserting those grounds. Requests that lack adequate support may be denied or the recipient may be required to provide additional support, which could delay a decision on the request.

The lack of full funding will not necessarily be a sufficient showing for multiple extension requests, as recipients should continually make progress toward completing their projects by the end of their removal, replacement, and disposal term. The Bureau will evaluate the sufficiency of each individual extension request at the time it is filed in determining whether to grant or deny it. We emphasize that a recipient's statutory obligation to complete the permanent removal, replacement, and disposal of covered communications equipment or services exists regardless of the amount of funding it may receive through the Reimbursement Program pursuant to the Secure Networks Act. The Secure Networks Act and the Commission's rules require each Reimbursement Program recipient to remove, replace, and dispose of "all" its covered equipment and services.¹² Similarly, the Reimbursement Program FAQs (at 21) state that "[p]roviders are expected to remove, replace, and dispose of all Huawei and/or ZTE communications equipment and services in their networks as of the date of the submission of the application even if they receive a prorated allocation from the Reimbursement Program due to funding constraints."¹³

Consistent with the Commission's goal of streamlining its internal review processes,¹⁴ and further pursuant to our delegated authority,¹⁵ we announced in our *January 2024 Streamlined Resolution Public Notice* that we would, with that Public Notice, begin issuing a Public Notice, as necessary but not more frequently than monthly, disposing of pending petitions which seek an extension of an applicants' removal, replacement, and disposal terms, do not involve complicated and/or controversial issues, and can be addressed in a manner consistent with Commission and/or Bureau precedent.¹⁶ Accordingly, we

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Communication System, Inc. based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1196, para. 5 (WCB Dec. 21, 2023) (*GigSky, Inc. Extension Order*) (granting extension of time request by GigSky, Inc. based on funding issues).

¹² 47 U.S.C. § 1603(e)(4)(A)(ii) (recipient must file a final certification to show removal, replacement, and disposal of "all" covered equipment and services); 47 CFR 1.50004(m)(1) (same); *see also* 47 U.S.C. § 1603(d)(4)(A)(i)(I) (applicant must certify it has a plan to remove "any" covered equipment and services); 47 CFR § 1.50004(a)(3)(i)(A) (same).

¹³ <https://docs.fcc.gov/public/attachments/DA-24-234A2.pdf>. Within 10 days following the expiration of the removal, replacement, and disposal term, a recipient must file a final certification with the Commission indicating whether it has fully complied with all terms and conditions of the Reimbursement Program. 47 U.S.C. § 1603(e)(4)(A); 47 CFR § 1.50004(m)(1).

¹⁴ *See Report on FCC Process Reform*, GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) (*Process Reform Report*).

¹⁵ *See* 47 CFR §§ 0.91, 0.291, 1.50004(h)(2).

¹⁶ *Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 24-88, at 3 (WCB Jan. 31, 2024) (*January 2024 Streamlined Resolution Public Notice*). This approach further speeds the disposition of petitions seeking extension of the removal, replacement, and disposal term and to ensure the continued efficient administration of the Reimbursement Program, while at the same time fulfilling our obligation to thoroughly review the record before us. *Id.* Prior to issuance of the *January 2024 Streamlined Resolution Public Notice*, we had resolved petitions for extensions of recipients' removal, replacement, and disposal terms in stand-alone orders addressing each petition. The Bureau

(continued....)

hereby grant the pending petitions listed below for an extension of a recipient's term to remove, replace, and dispose of its covered equipment.¹⁷

Recipient – Copper Valley Wireless, LLC, SCRP0001157

Grounds for individual term extension – Copper Valley Wireless, LLC (CVW) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).¹⁸ CVW asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 21, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. CVW states that “unforeseen supply chain delays [have] pushed [its] projects behind schedule.”¹⁹ CVW explains that it has faced equipment delays that have been further exacerbated due to a limited “construction season” and a related need to make advance plans to move “equipment to . . . remote site[s]” in the regions of Alaska where CVW operates.²⁰ CVW also reports that it has been unable to retain the services of sufficient “tower/construction crews” to perform needed work.²¹ As to the lack of full funding, CVW notes that this forced it to “reduc[e] costs,” including through the “consolidation of shipments,” which further delayed its project timeline.²² Despite these issues, CVW reports that it has successfully “completed the full disposal of all [c]overed equipment from all of its forty-two (42) sites, including the Core Network” and that it is in the “process of completing the replacement equipment installations at a few remaining sites[.]”²³ CVW requests the present extension to complete the replacement work.²⁴ The Bureau finds CVW’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,²⁵ and accordingly grants the requested extension through January 21, 2025.

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_____ routinely resolves other matters in the manner of the *January 2024 Streamlined Resolution Public Notice*, as appropriate. See, e.g., *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) (stating that the Bureau will resolve certain Universal Service Fund matters in a streamlined public notice).

¹⁷ This Public Notice does not take positions on the merits of grounds raised by requestors other than those identified and discussed herein. In addition, we expressly reject any suggestion in the requests that a recipient is required to meet its statutorily mandated removal, replacement, and disposal obligations only if full funding is made available by Congress.

¹⁸ See Request of CVW for Extension of Time, WC Docket No. 18-89 (filed July 3, 2024).

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2-3.

²¹ *Id.* at 2.

²² *Id.* at 3.

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

New RRD term expiration date – CVW’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 21, 2024 to January 21, 2025.

Recipient – Hotwire Communications, Ltd., SCRP0001146; SCRP0001147; SCRP0001148

Grounds for individual term extension – Hotwire Communications, Ltd. (Hotwire) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) as to each of the above-identified applications.²⁶ Hotwire asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its August 5, 2024 deadline as to each of the above-identified applications has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. As to supply chain issues, Hotwire states that its project has been impacted by “significant” delays and “sporadic” deliveries of “custom-designed replacement equipment[] ordered in 2022” and “dwindling access to alternative equipment.”²⁷ Hotwire states that even if all the equipment were delivered promptly, “industry-wide shortages” in specialized labor would still prevent it from completing all of its program obligations by its current deadline date.²⁸ As to the funding shortfall, Hotwire states that uncertainty around the funding situation delayed its decision on whether to make “meaningful modifications to [its original] plan,” which could have “compromise[ed] network integrity and caus[ed] increased consumer impact,” and that this delayed its overall project timeline.²⁹ Despite these issues, Hotwire reports that, as of June 2024, it has received “about 45% of [its] total order” and that it has successfully completed “on-site visits with thousands of customers to replace and dispose of covered equipment.”³⁰ The Bureau finds Hotwire’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,³¹ and accordingly grants the requested extension through February 5, 2025 for each of the above-identified applications.

New RRD term expiration date – Hotwire’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED as follows:

- For File No. SCRP0001146, from August 5, 2024 to February 5, 2025;
- For File No. SCRP0001147, from August 5, 2024 to February 5, 2025; and
- For File No. SCRP0001148, from August 5, 2024 to February 5, 2025.

²⁶ See Request of Hotwire for Extension of Time in Application SCRP0001146, WC Docket No. 18-89 (filed July 1, 2024) (Request for Extension of Time in Application SCRP0001146); see Request of Hotwire for Extension of Time in Application SCRP0001147, WC Docket No. 18-89 (filed July 1, 2024); see Request of Hotwire for Extension of Time in Application SCRP0001148, WC Docket No. 18-89 (filed July 1, 2024).

²⁷ E.g., Request for Extension of Time in Application SCRP0001146 at 2.

²⁸ E.g., *id.*

²⁹ E.g., *id.*

³⁰ E.g., *id.*

³¹ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

Recipient – LigTel Communications, Inc., SCRP0001155

Grounds for individual term extension – LigTel Communications, Inc. (LigTel) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).³² LigTel asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 22, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. As to supply chain issues, LigTel reports that it has been impacted by “longer lead-times on equipment and materials . . . than originally anticipated or quoted by vendors” and that this “shift[ed] the timeline of [its] project.”³³ LigTel further states that it was impacted by “extended timing” related to “finding contractors with crews and availability to engage in and timely complete” required removal, replacement, and disposal processes.³⁴ As to the lack of full funding, LigTel notes that this impacted its ability to adapt to challenges, including by compromising its ability to “work around” the supply chain delays described above.³⁵ Despite these issues, LigTel reports that it has already “removed its [c]overed wireless equipment” and is “awaiting confirmation of the official disposal and certification” from its recycling vendor.³⁶ LigTel accordingly requests an extension of its removal, replacement, and disposal deadline. The Bureau finds LigTel’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,³⁷ and accordingly grants the requested extension through January 22, 2025.

New RRD term expiration date – LigTel’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 22, 2024 to January 22, 2025.

Recipient – Mediacom Communications Corporation, SCRP0001140

Grounds for individual term extension – Mediacom Communications Corporation (Mediacom) requests a fourth three-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).³⁸ Mediacom asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 15, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. Since the Bureau granted Mediacom’s most recent extension request,³⁹ Mediacom reports that, while certain supply chain issues are now resolved, its “previously cited delivery delays [had an] overall impact” that have

³² See Request of LigTel for Extension of Time, WC Docket No. 18-89 (filed July 3, 2024).

³³ *Id.* at 2.

³⁴ *Id.* at 1-2.

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

³⁸ See Request of Mediacom for Extension of Time, WC Docket No. 18-89 (filed July 13, 2024).

³⁹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 24-313, at 5-6 (WCB Mar. 29, 2024).

continued to prevent it from meeting all of its program obligations to date.⁴⁰ Similarly, Mediacom notes that, while it successfully revised its service migration plans to account for the funding shortfall, associated earlier delays have continued to impact it.⁴¹ Despite these residual delays caused by earlier-reported lack of funding and supply chain issues, Mediacom reports that it has now “completed 100% of the removal and replacement of covered equipment under the program” and that it has made significant progress towards its disposal obligations.⁴² Mediacom requests “one final three-month extension” of its deadline and states that it has “very high confidence” that it will be able to meet all of its program obligations if its request is granted.⁴³ The Bureau finds Mediacom’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,⁴⁴ and accordingly grants the requested extension through October 15, 2024.

New RRD term expiration date – Mediacom’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 15, 2024 to October 15, 2024.

Recipient – Nemont Telephone Cooperative Inc., SCRP0001084

Grounds for individual term extension – Nemont Telephone Cooperative Inc. (Nemont) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁴⁵ Nemont asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its August 26, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. Nemont states that the lack of full funding has forced it to “reengineer its network re-deployment,” which has resulted in certain “added costs” and “significant delay” in meeting its program obligations.⁴⁶ Nemont reports that, as a result, it has not yet been able to “re-deploy all its existing towers.”⁴⁷ As to supply chain issues, Nemont reports that there is not a sufficient “availability of qualified and reliable installation crews” and that this has delayed its ability to comply with its program obligations by its current deadline.⁴⁸ Despite these issues, Nemont indicates that the requested extension, if granted, would allow it to “complete the removal, replacement, and destruction process.”⁴⁹ On this basis, the Bureau finds Nemont’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and

⁴⁰ Request of Mediacom at 3.

⁴¹ *Id.*

⁴² *Id.* at 4.

⁴³ *Id.* at 5.

⁴⁴ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁴⁵ See Request of Nemont for Extension of Time, WC Docket No. 18-89 (filed June 28, 2024).

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 2-3.

⁴⁹ *Id.* at 3.

supply chain issues,⁵⁰ and accordingly grants the requested extension through February 26, 2025.

New RRD term expiration date – Nemont’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from August 26, 2024 to February 26, 2025.

Recipient – NfinityLink Communications, Inc., SCRP0001173

Grounds for individual term extension – NfinityLink Communications, Inc. (NfinityLink) requests a second six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁵¹ NfinityLink asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its August 15, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. NfinityLink states that, since the Bureau granted its first extension request,⁵² it has ordered more “equipment needed for compliance,” but that some of this equipment has current estimated lead times of 26 weeks or longer.⁵³ NfinityLink further notes that, while it “has been able to hire some additional staff,” it continues to be “difficult to locate and hire qualified applicants” based on “industry-wide personnel shortages.”⁵⁴ NfinityLink reports that the most significant issue it faces is lack of full funding while it works toward full compliance, and that doing so has required it to expend “significant engineering and administrative resources” that have caused significant delays in meeting its program obligations.⁵⁵ Despite these issues, NfinityLink reports that it is now in the “process of moving customers” to its new platform and that it has secured a facility with sufficient space to house its compliant equipment.⁵⁶ The Bureau finds NfinityLink’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,⁵⁷ and accordingly grants the requested extension through February 15, 2025.

New RRD term expiration date – NfinityLink’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from August 15, 2024 to February 15, 2025.

⁵⁰ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁵¹ See Request of NfinityLink for Extension of Time, WC Docket No. 18-89 (filed July 2, 2024) (Request of NfinityLink).

⁵² See *January 2024 Streamlined Resolution Public Notice* at 4.

⁵³ See Request of NfinityLink at 2.

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 1-2.

⁵⁶ *Id.* at 1.

⁵⁷ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

Recipient – Santel Communications Cooperative, Inc., SCRP0001151

Grounds for individual term extension – Santel Communications Cooperative, Inc. (Santel) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁵⁸ Santel asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 25, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. Santel states that it has been impacted by “supply chain shipment delays, particularly related to its purchase of fiber optic cabling, that were exponentially longer [than] originally” expected.⁵⁹ As to the lack of full funding, Santel reports that this compromised its “ability to fully plan [for] and . . . overcome the additional expense and time inputs required to adjust for the delays and unforeseen circumstances.”⁶⁰ Despite these reported issues, Santel reports progress towards completing its program obligations. Santel notes that it has removed certain types of covered equipment from its network and passed control of the equipment on to its recycler and that it “continues to diligently work toward full completion of its [program] requirements.”⁶¹ The Bureau finds Santel’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding and supply chain issues,⁶² and accordingly grants the requested extension through January 25, 2025.

New RRD term expiration date – Santel’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 25, 2024 to January 25, 2025.

Recipient – Skybeam, LLC, SCRP0001158; SCRP0001161

Grounds for individual term extension – Skybeam, LLC (Skybeam) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) as to each of the above-identified applications.⁶³ Skybeam asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 21, 2024 deadline as to each application has, through no fault of its own, been materially affected by the lack of full funding. Skybeam states that the lack of full funding has required it “to develop multiple [project] plans” and “[s]ignificant time and expense have been devoted” to these efforts, which has “resulted in a longer program timeline” than it had originally anticipated.⁶⁴ Skybeam similarly notes that the limited funding has slowed

⁵⁸ See Request of Santel for Extension of Time, WC Docket No. 18-89 (filed July 3, 2024).

⁵⁹ *Id.* at 2.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁶³ See Supplemental Request of Skybeam for Extension of Time in Application SCRP0001158, WC Docket No. 18-89 (filed July 9, 2024) (Supplemental Request of Skybeam); see Request of Skybeam for Extension of Time in Application SCRP0001158, WC Docket No. 18-89 (filed June 20, 2024); see Supplemental Request of Skybeam for Extension of Time in Application SCRP0001161, WC Docket No. 18-89 (filed July 9, 2024); see Request of Skybeam for Extension of Time in Application SCRP0001161, WC Docket No. 18-89 (filed June 20, 2024).

its “rollout of new, comparable replacement equipment” and increased its “expected program management and planning expenses,” while making it difficult to “purchase all necessary approved equipment” and “fund the labor required” to meet its program obligations.⁶⁵ Despite these reported issues, Skybeam explains that it has “invested considerable time in additional engineering and planning” towards meeting its program obligations and indicates that it has started to consider “a range of options” to do so.⁶⁶ The Bureau finds Skybeam’s showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of the lack of full funding,⁶⁷ and accordingly grants the requested extension as to each of the above-identified applications through January 21, 2025.

New RRD term expiration date – Skybeam’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED as follows:

- For File No. SCRP0001158, from July 21, 2024 to January 21, 2025; and
- For File No. SCRP0001161, from July 21, 2024 to January 21, 2025.

For additional information concerning this Public Notice, please contact Ty Covey in the Competition Policy Division, Wireline Competition Bureau, at ty.covey@fcc.gov or (202) 418-1372.

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⁶⁴ *E.g.*, Supplemental Request of Skybeam at 1.

⁶⁵ *E.g., id.*

⁶⁶ *E.g., id.*

⁶⁷ *See, e.g., WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5.



PUBLIC NOTICE

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DA 24-743

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROPOSED ELIGIBLE SERVICES LIST FOR THE E-RATE PROGRAM

WC Docket No. 13-184

Comment Date: August 30, 2024

Reply Comment Date: September 16, 2024

The Wireline Competition Bureau (Bureau) pursuant to section 54.502(e) of the Federal Communications Commission's (Commission) rules seeks comment on the proposed eligible services list (ESL) for the schools and libraries universal service support mechanism (more commonly known as the E-Rate program) for funding year (FY) 2025.¹

This year, the Bureau proposes revisions to the draft FY 2025 eligible services list to implement the changes adopted by the Commission in the *Wi-Fi Hotspot Report and Order*.² We have included the proposed FY 2025 eligible services list as an Attachment to this Public Notice with the proposed revisions. Below, we identify changes between the funding year 2024 and the proposed funding year 2025 ESL, and we seek comment on whether we should adopt or modify these changes:

- The proposed ESL revises the description of “wireless” service under Category One to read “Wireless (e.g., fixed wireless; microwave; mobile service for use on school buses; or mobile service for use with Wi-Fi hotspots).” This revision reflects the Commission’s adoption of a Report and Order making eligible the off-premises use of Wi-Fi hotspots and mobile wireless Internet access services.³
- The proposed ESL amends the explanation of “Wireless services and wireless Internet access” in the “Eligibility Explanations for Certain Category One and Category Two Services” to clarify a number of issues from the *Wi-Fi Hotspot Report and Order*.
 - First, the proposed explanation includes language noting the eligibility of off-premises use of Wi-Fi hotspots and mobile wireless Internet services. It also includes an explanation of Wi-Fi hotspot eligibility, consistent with the *Wi-Fi Hotspot Report and Order*.⁴

¹ See 47 CFR § 54.502(e) (detailing the procedures for seeking comment on a draft E-Rate program eligible services list); Attachment, Draft Schools and Libraries Eligible Services List for Funding Year 2025.

² *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76 (2024) (*Wi-Fi Hotspots Report and Order*).

³ See *Wi-Fi Hotspots Report and Order*, at para. 22 (making Wi-Fi hotspots and mobile wireless Internet services eligible for E-Rate).

⁴ See *Wi-Fi Hotspots Report and Order*, at para. 23 (explaining Wi-Fi hotspot eligibility); para. 44 (noting that the Wi-Fi hotspot qualifies as the purchase of network equipment for the mobile wireless Internet services).

- Second, the proposed explanation modifies and moves the sentence clarifying eligibility of off-campus wireless service on a school bus to the second paragraph.
- Third, the proposed explanation modifies the sentence to make clear that cost-allocation of off-campus use of E-Rate-funded services is required.
- Finally, the proposed ESL clarifies the cost-effectiveness test required for data plans and air cards. In 2014, the Commission recognized that there are a few locales where a wired local area network is impracticable, such as a library bookmobile and set out a cost-effectiveness requirement for on-premises use of Wi-Fi hotspots. Since then, the ESL has explained that “[s]eeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and WLAN implicates the E-Rate program’s prohibition on requests for duplicative services,” but explains that if, however, a bookmobile, which is eligible as a library in its state, requires mobile connectivity, it may demonstrate that it is the most cost-effective option for delivering service to the bookmobile.⁵ The proposed language change to this explanation clarifies that this requirement applies only to on-campus use.⁶

We invite stakeholders to comment on these proposed revisions, as well as on the proposed eligible services list for funding year 2025.⁷ Pursuant to section 1.419 of the Commission’s rules,⁸ interested parties may file comments on or before August 30, 2024 and reply comments on or before September 16, 2024. All comments are to reference WC Docket No. 13-184 and may be filed by paper or by using the Commission’s Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

⁵ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8933, para. 153 (2014) (*First 2014 E-Rate Order*).

⁶ See *Wi-Fi Hotspots Report and Order*, at para. 45 & n.176.

⁷ In 2023, the Commission proposed several changes to the E-Rate program that could affect the services and equipment that are eligible for E-Rate support. See generally *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56, 2023 WL 4730084 (July 21, 2023). If those changes are adopted, the Bureau may solicit feedback and make additional corresponding modifications to the FY 2025 ESL as appropriate.

⁸ 47 CFR § 1.419.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.⁹

Ex Parte Rules. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰ 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 *ex parte* 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.¹¹ In proceedings governed by section 1.49(f) of the Commission’s rules,¹² 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 ECFS in the docket 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 Saswat Misra, Telecommunications Access Policy Division, Wireline Competition Bureau, by email at Saswat.Misra@fcc.gov or by phone at (202) 418-0944.

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⁹ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

¹⁰ 47 CFR §§ 1.1200 *et seq.*

¹¹ 47 CFR § 1.1206(b).

¹² 47 CFR § 1.49(f).

ATTACHMENT**Eligible Services List for Funding Year 2025
Schools and Libraries Universal Service Support Mechanism****WC Docket No. 13-184**

The Federal Communications Commission's (FCC) rules provide that all services that are eligible to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-Rate program or E-Rate) are listed in this Eligible Services List (ESL). 47 CFR § 54.502(a). The E-Rate program is administered by the Universal Service Administrative Company (USAC). 47 CFR § 54.5. Eligible schools and libraries may seek E-Rate support for eligible Category One telecommunications services, telecommunications, and Internet access, and Category Two internal connections, basic maintenance, and managed internal broadband services as identified herein. 47 CFR §§ 54.500 *et seq.*

Additional guidance from USAC about the E-Rate application process and about eligible services, including a glossary of terms, is available at USAC's website at <https://www.usac.org/erate/applicantprocess/before-you-begin/eligible-services-list/>. The documents on USAC's website are not incorporated by reference into the ESL and do not bind the Commission. Thus, they will not be used to determine whether a service or product is eligible. Applicants and service providers may refer to those documents, but they should do so only for informal guidance. This ESL applies to funding requests for Funding Year (FY) 2025.

Category One

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Eligible Category One services are listed in the entries for data transmission and/or Internet access. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. With the exception of leased dark fiber and self-provisioned broadband networks, maintenance and technical support appropriate to maintain reliable operation are only eligible for support when provided as a component of these services.

Data Transmission and/or Internet Access

Data transmission and/or Internet access services are eligible in Category One. These services include:

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Integrated Services Digital Network (ISDN)

Note: Dedicated voice channels on an ISDN circuit are no longer eligible.

- Leased Lit Fiber
- Leased Dark Fiber (including dark fiber indefeasible rights of use (IRUs) for a set term)
- Self-Provisioned Broadband Networks (applicant owned and operated networks)
- Frame Relay
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n
- Satellite
- Switched Multimegabit Data Service
- Telephone dial-up
- Wireless (e.g., fixed wireless; microwave; mobile service for use on school buses; or mobile service for use with Wi-Fi hotspots)

Notes:

- (1) Eligible costs include monthly charges, special construction, installation and activation charges, software, modulating electronics and other equipment necessary to make a Category One wired or wireless broadband service functional ("Network Equipment"), and maintenance and operation charges, including costs for software needed for the operation of or maintenance of Network Equipment. Network Equipment and maintenance and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid.
- (2) Applicants that seek bids for leased dark fiber must also seek bids for leased lit fiber service and fully consider all responsive bids. Similarly, applicants that seek bids for self-provisioned broadband networks must also seek bids for the needed connectivity via services provided over third-party networks, and fully consider all responsive bids.
- (3) Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities. The eligible components of special construction are construction of network facilities, design and engineering, and project management.
- (4) Staff salaries and labor costs for personnel of the applicant or underlying beneficiary are not E-Rate eligible.
- (5) Consulting services that are not related to the installation and configuration of the eligible components are not eligible. These include services related to application assistance, program advice, and other activities not tied directly to actual installation and initial configuration of components.

Category Two

The second category of equipment and services eligible for E-Rate support, Category Two, includes the internal connections needed for broadband connectivity within schools and libraries. Support is limited to the internal connections necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus (as defined below in the section titled “Eligibility Explanations for Certain Category One and Category Two Services”) or library branch, and basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Category Two support is subject to district- or library system-wide budgets as set forth in 47 CFR § 54.502. The eligible components and services in Category Two are:

Eligible Broadband Internal Connections

- Antennas, connectors, and related components used for internal broadband connections
- Cabling
- Caching
- Firewall services and firewall components separate from basic firewall protection provided as a standard component of a vendor’s Internet access service
- Racks
- Routers
- Switches
- Uninterruptible power supply (UPS)/battery backup
- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Wireless controller systems
- Software supporting the components on this list used to distribute high-speed broadband throughout school buildings and libraries (applicants should request software in the same category as the associated service being obtained or installed)

Notes:

- (1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.
- (2) A manufacturer’s multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.
- (3) Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.
- (4) Applicants may request both equipment and the software necessary to use the equipment on the FCC Form 470, or request just the equipment on the FCC Form 470, and still receive support for both the equipment and the software necessary to use the equipment (e.g., right-to-use software or client access licenses) by requesting the equipment and software either together or separately on the FCC Form 471. However, software upgrades and patches, including bug fixes and security patches, are considered basic maintenance of internal connections, and as such, applicants should seek bids for basic maintenance of internal connections if they intend to request funding for these services.

Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-Rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation, and initial configuration of eligible components and on-site training on the use of eligible equipment.
- In some eligible managed internal broadband services models, the third-party manager owns and installs the equipment and school and library applicants lease the equipment as part of the managed services contract. In other cases, the school or library may own the equipment, but have a third party manage the equipment for it.

Basic Maintenance of Eligible Broadband Internal Connections

E-Rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for eligible broadband internal connections.

The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware.
- Wire and cable maintenance.
- Configuration changes.
- Basic technical support including online and telephone-based technical support.
- Software upgrades and patches including bug fixes and security patches.

Eligibility Limitations for Category Two Services

Eligibility limitations for managed internal broadband services – The equipment eligible for support as part of a managed internal broadband service may include only equipment listed above as broadband internal connections. Upfront charges that are part of a managed service contract are eligible for E-Rate support except to the extent that the upfront charges are for any ineligible internal connections (e.g., servers other than those that are necessary to provide caching), which, if included in the contract, must be cost allocated out of any funding request.

Eligibility limitations for basic maintenance – Basic maintenance is eligible for support only if it is a component of a maintenance agreement or contract for eligible broadband internal connections. The agreement or contract must specifically identify the eligible internal connections covered, including product name, model number, and location. Support for basic maintenance will be paid for the actual work performed under the agreement or contract. Support for bug fixes, security patches, and technical support is not subject to this limitation.

Basic maintenance does not include:

- Services that maintain ineligible equipment
- Upfront estimates that cover the full cost of every piece of eligible equipment
- Services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information
- Network management services, including 24-hour network monitoring
- On-site technical support (i.e., contractor duty station at the applicant site), unless applicants present sufficient evidence of cost-effectiveness
- Unbundled warranties

Eligibility Explanations for Certain Category One and Category Two Services

National Security Supply Chain Restrictions – Equipment or services produced or provided by a company that the FCC has designated as a national security threat to the integrity of communications networks or the communications supply chain are not eligible for E-Rate support. 47 CFR § 54.9(a). In addition, participants are prohibited from using E-Rate support to purchase, rent, lease, or otherwise obtain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. 47 CFR § 54.10. A list of covered communications equipment and services can be found on the FCC’s website at <https://www.fcc.gov/supplychain/coveredlist> and will be updated to reflect any future determinations.

Internet access/ISP service – Eligible Internet access services may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor’s Internet access service. Firewall protection that is provided by a vendor other than the Internet access service provider or priced out separately will be considered a Category Two internal connections component. Examples of items that are ineligible components of Internet access services include applications, content, e-mail, and end-user devices and equipment such as computers, laptops, and tablets.

Wireless services and wireless Internet access – In accordance with the *Wi-Fi Hotspot Report and Order* (FCC 24-76), the off-campus use of Wi-Fi hotspots and mobile wireless Internet services is eligible for E-Rate support. Wi-Fi hotspots that are portable and a single device (i.e., not a set of linked devices) are eligible as Network Equipment as indicated in Note (1) under Category One.

As clarified in the *Wi-Fi on School Buses Declaratory Ruling* (FCC 23-84), the off-campus use of wireless service and the equipment needed to make this wireless service for school buses functional (e.g., antennas, routers, modems) is eligible for E-Rate support.

Outside of these delineated exceptions, in general, off-campus use of E-Rate-funded services even if used for an educational purpose, is ineligible for support, and must be cost-allocated out of any funding request.

In order for data plans and air cards for mobile devices for use on-campus (e.g., a bookmobile in a state where it is eligible for support as a library) to be eligible, the school or library seeking support must demonstrate that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries. Applicants should compare the cost of data plans or air cards for mobile devices to the total cost of all components necessary to deliver connectivity to the end user device, including the cost of data transmission and/or Internet access to the school or library. Seeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and WLAN implicates the E-Rate program’s prohibition on requests for duplicative services.

Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

Connections between buildings of a single school – The classification of connections between multiple buildings of a single school is determined by whether the buildings are located on the same campus. A “campus” is defined as the geographically contiguous grounds where the instructional buildings of a single eligible school are located. A single school may have multiple campuses if it has instructional buildings located on grounds that are not geographically contiguous. Different schools located on the same grounds do not comprise a single campus. The portion of the grounds occupied by the instructional buildings for each school is a campus for that school.

- Connections between buildings on different campuses of a single school are considered to be Category One data transmission services.
- Connections between different schools with campuses located on the same property (e.g., an elementary school and middle school located on the same property) are considered to be Category One data transmission services, unless they share the same building.
- Connections between buildings of a single school on the same campus are considered to be Category Two internal connections.

Network equipment with mixed eligibility – On-premises equipment that connects to a Category Two eligible LAN is eligible for Category One support if it is necessary to make a Category One broadband service functional. If the price for components that enable the LAN can be isolated from the price of the components that enable the Category One service, those costs should be cost-allocated out of the Category One funding request.

Miscellaneous

As described below, various miscellaneous services associated with Category One or Category Two are eligible for support. Applicants should request eligible miscellaneous services in the same category as the associated service being obtained or installed.

Fees

Fees and charges that are a necessary component of an eligible product or service are eligible, including:

- Change fees
- Contingency fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.
- Freight assurance fees
- Lease or rental fees on eligible equipment
- Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs
- Shipping charges
- Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. These types of charges include customer charges for universal service fees, but do not include additional charges for universal service administration.

Installation, Activation, and Initial Configuration

Installation, activation, and initial configuration of eligible components are eligible. These services may include:

- Design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training must occur coincidentally or within a reasonable time after installation.



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 24-744

Released: July 31, 2024

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

WC Docket No(s). 24-190

Comments Due: August 15, 2024

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

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

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **August 31, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

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

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **August 15, 2024**. 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 paper copies must file an original and one copy of each filing. Such filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

This proceeding 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.

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

⁶ 47 CFR § 1.1200 *et seq.*

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).

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): ANPI Business, LLC f/k/a Zone Telecom Inc (ANPI)

WC Docket No. 24-190, Comp. Pol. File No. 1926

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-190*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-190*%22)))

Affected Service(s) – switchless interstate long distance and toll free services

Service Area(s) – Arizona, California, Colorado, Florida, Georgia, Illinois, Kansas, Maryland, Maine, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia and Wisconsin

Authorized Date(s) – on or after August 31, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: ANPI states that it plans to discontinue the Affected Services in Arizona on September 7, 2024.



PUBLIC NOTICE

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WASHINGTON D.C. 20554

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TTY (202) 418-2555

DA No. 24-745

Report No. TEL-02383

Thursday August 1, 2024

International Authorizations Granted

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

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12 and 63.20 of the Commission's rules. 47 CFR §§ 63.12, 63.20.

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

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

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20240625-00111	E	Gold Telecom, Inc.
International Telecommunications Certificate		
Service(s):	Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service	
Grant of Authority		Date of Action: 07/26/2024

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

Gold Telecom, a Florida corporation, is wholly owned by Justo Valladares, a U.S. citizen.

ITC-T/C-20240528-00093 E

Reasnor Telephone Company, LLC

Transfer of Control

Grant of Authority

Date of Action: 07/26/2024

Current Licensee: Reasnor Telephone Company, LLC

FROM: GS IOWA VENTURES

TO: Integrated Path Communications, LLC

Reasnor Telephone Company, LLC (Reasnor), a Nebraska limited liability company that holds an international section 214 authorization to provide global resale service (ITC-214-20160120-00028), filed an application for consent to the transfer of control of Reasnor from GS Iowa Ventures, LLC (GS Iowa Ventures) to Integrated Path Communications, LLC (Integrated Path). Reasnor is a wholly owned subsidiary of GS Iowa Ventures.

Pursuant to the terms of a Membership Interest Purchase Agreement, Integrated Path will purchase 100% of the ownership interests in Reasnor from GS Iowa Ventures. Upon consummation, Reasnor will become a direct wholly owned subsidiary of Integrated Path, a New York limited liability company. Brian Shepard, a U.S. citizen, is the sole owner of Integrated Path.

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

INFORMATIVE

ITC-214-19960830-00414

AT&T Corp.

By letter dated July 25, 2024, AT&T Corp. notified the Commission that it will be discontinuing AT&T Conferencing Services. These services will no longer be available to new customers as of September 16, 2024, and will be discontinued as of December 15, 2024.

ITC-214-20081112-00494

1Global Operations (US) Inc.

By letter dated July 26, 2024, the Commission was notified that Truphone Inc. has changed its name to 1Global Operations (US) Inc., and its immediate parent, TP US Operations Inc. has changed its name to 1Global Holdings (Americas) Inc.

SURRENDER

ITC-214-19971126-00741

iBasis, Inc.

On July 25, 2024, iBasis, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20090630-00306

XCast Labs, Inc.

On July 30, 2024, XCast Labs, Inc. notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

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



PUBLIC NOTICE

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TTY (202) 418-2555

DA No. 24-746

Report No. SCL-00478

Thursday August 1, 2024

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-20240626-00029

GU Holdings Inc.

On July 31, 2024, we granted the request for special temporary authority (STA) filed by GU Holdings Inc. (GU Holdings) to construct, connect, and test at its own risk those portions of the TPU cable system in U.S. territory prior to the Commission's action on the pending cable landing license application for the TPU cable system (SCL-LIC-20230511-00013). GU Holdings acknowledges that grant of the STA will not prejudice action by the Commission on the underlying application and that the STA is subject to cancellation or modification upon notice without a hearing.

The STA expires on January 27, 2025.



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 24-747
Released: August 1, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO GRANDFATHER DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-225, 24-226, 24-228 and 24-229

Comments Due: August 16, 2024

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 1, 2024**, 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 **August 16, 2024**. 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 paper copies must file an original and one copy of each filing. Such filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

This proceeding 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.

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

⁶ 47 CFR § 1.1200 *et seq.*

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

– FCC –

Appendix

1) Applicant(s): AT&T Services, Inc., on behalf of its affiliate Southwestern Bell Telephone Company, LLC, d/b/a AT&T Texas (AT&T)

WC Docket No. 24-225, Comp. Pol. File No. 1930

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-225*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-225*%22)))

Affected Service(s) – AT&T Phone for Business (business VoIP service)

Service Area(s) – in one wire center in Texas, as specified in the application

Authorized Date(s) – on or after September 1, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: AT&T states that this application covers four customers who were inadvertently omitted from receiving the customer notice in a related application in WC Docket No. 23-399 that was automatically granted on February 12, 2024 for the same Affected Service. AT&T states further that, on or after September 1, 2024, it plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification.

2) Applicant(s): AT&T Services, Inc., on behalf of its affiliates⁷ (AT&T)

WC Docket No. 24-226, Comp. Pol. File No. 1931

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-226*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-226*%22)))

Affected Service(s) – AT&T Residential Local Service and AT&T Business Local Exchange Access Line Service

Service Area(s) – in 49 wire centers in sections of Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin, as specified in the application

Authorized Date(s) – on or after September 1, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: AT&T states that this application covers 253 customers who were inadvertently omitted from receiving the customer notice in a related application in WC Docket No. 23-400 that was automatically granted on February 6, 2024 for the same Affected Services. AT&T states further that, on or after September 1, 2024, it plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month

⁷ BellSouth Telecommunications, LLC, d/b/a AT&T Florida, AT&T Kentucky, AT&T Louisiana, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone, LLC, d/b/a AT&T Illinois; Indiana Bell Telephone Company, LLC, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; The Ohio Bell Telephone Company, LLC, d/b/a AT&T Ohio; Southwestern Bell Telephone Company, LLC, d/b/a AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, LLC, d/b/a AT&T Wisconsin

basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification.

3) Applicant(s): AT&T Services, Inc., on behalf of its affiliate BellSouth Telecommunications, LLC, d/b/a AT&T Florida and AT&T Tennessee (AT&T)

WC Docket No. 24-228, Comp. Pol. File No. 1933

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-228*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-228*%22)))

Affected Service(s) – legacy DS1 service

Service Area(s) – in sections of Florida and Tennessee, as specified in the application

Authorized Date(s) – on or after September 1, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: AT&T states that this application covers four customers who were inadvertently omitted from receiving the customer notice in a related application in WC Docket No. 23-397 that was automatically granted on February 12, 2024 for the same Affected Service. AT&T states further that, on or after September 1, 2024, it plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification.

4) Applicant(s): AT&T Services, Inc., on behalf of its affiliates⁸ (AT&T)

WC Docket No. 24-229, Comp. Pol. File No. 1934

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-229*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-229*%22)))

Affected Service(s) – DS1 and DS3 services

Service Area(s) – in sections of four wire centers located in Illinois, Missouri, Ohio and Tennessee, as specified in the application

Authorized Date(s) – on or after September 1, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: AT&T states that, on or after September 1, 2024, it plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification.

⁸ Illinois Bell Telephone, LLC, d/b/a AT&T Illinois; BellSouth Telecommunications, LLC, d/b/a AT&T Tennessee; The Ohio Bell Telephone Company, LLC, d/b/a AT&T Ohio; Southwestern Bell Telephone Company, LLC, d/b/a AT&T Missouri



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 24-748

Released: August 1, 2024

REQUEST FOR COMMENT ON PETITION FOR RULEMAKING TO REQUIRE A COMMUNICATIONS ASSISTANT OPTION FOR IP CTS

CG Docket Nos. 13-24 & 03-123
RM-11987

Comments Due: September 3, 2024

Reply Comments Due: September 16, 2024

The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) seeks comment on petition for rulemaking filed by TDIforAccess, Inc. (TDI), the National Association of the Deaf (NAD), and Hearing Loss Association of America (HLAA) (Accessibility Organizations).¹

The Accessibility Organizations seek reversal of a prior Commission decision allowing IP CTS providers to rely exclusively on automatic speech recognition (ASR) to generate captions for Internet Protocol Captioned Telephone Service (IP CTS), a relay service supported by the Interstate Telecommunications Relay Services Fund.² They ask the Commission to amend its rules to require all IP CTS providers to give users the option at the start of a call, or at any point thereafter during the call, of choosing to have a CA generate captions.³ The Accessibility Organizations also request that the Commission refrain from certifying any further ASR-only IP CTS providers pending the completion of the requested rulemaking proceeding, and that the Commission complete its open proceeding to establish clear, technology-neutral performance goals and metrics for IP CTS.⁴

Filing Requirements. Interested parties may file comments on the Petition on or before the dates indicated on the first page of this document. All filings must reference CG Docket Nos. 13-24, 03-123, and RM-11987. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵

¹ Petition for Rulemaking to Require Option for Communications Assistants by Stand-Alone Automatic Captioning Providers (filed May 31, 2024), available at <https://www.fcc.gov/ecfs/document/10531086287963/1> (Accessibility Organizations Petition).

² Accessibility Organizations Petition at 3 (citing *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48 (2018) (*2018 IP CTS Order*)).

³ Accessibility Organizations Petition at 1.

⁴ *Id.* at 1-2.

⁵ 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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

Ex Parte Requirements. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.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.

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.

For further information, please contact Ross Slutsky by email at Ross.Slutsky@fcc.gov.

-FCC-

⁶ 47 C.F.R. §§ 1.1200 *et seq.*



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 24-749

Released: August 1, 2024

CLASS A, LOW POWER TELEVISION, AND TV TRANSLATOR MAJOR MODIFICATION APPLICATIONS ARE NOW AVAILABLE TO ACCESS IN THE COMMISSION'S LICENSING AND MANAGEMENT SYSTEM; REMINDER THAT 2020 CENSUS DATA MUST BE USED BY ALL TELEVISION STATIONS EFFECTIVE AUGUST 1, 2024

The Media Bureau has announced that beginning August 20, 2024, the Commission will lift its current freeze on major modification applications and permit all Class A television (Class A), low power television (LPTV), and television translator stations (TV translator) stations, on a nationwide basis, to file major change applications in order to change their existing channel, subject to certain limitations.¹ Applications will be processed on a first-come/first-served basis.² In anticipation of this filing opportunity, we announce that the Commission's Licensing and Management System (LMS) has been updated to make available for access major change applications for Class A, LPTV, and TV translator stations – FCC Form 2100, Schedule C (LPTV and TV translator stations) and FCC Form 2100, Schedule E (Class A stations).³ Effective immediately, applicants are permitted to input information in their major change application, but should not submit their application prior to August 20, 2024. **The current freeze on filing major change applications for Class A, LPTV, and TV translator stations remains in place until August 20, 2024.**⁴ **Applications filed prior to August 20, 2024, will be dismissed and applicants will need to re-file once the freeze is lifted.**

We also take this opportunity to remind all television stations (i.e., full power, Class A, LPTV, and TV translator stations) that the Commission's *TVStudy* software has incorporated the most recent U.S. Census Bureau decennial Census block and population data (2020 Census Data).⁵ **Therefore all television broadcast applications filed on or after August 1, 2024, will be required to utilize 2020**

¹ See *Media Bureau Announces Commencement of First-Come, First-Serve Channel Change Opportunity for Class A Television, LPTV, and TV Translator Stations Beginning on August 20, 2024*, Public Notice, DA 24-498 (rel. May 28, 2024). No major changes other than channel changes will be permitted. Any changes to a station's facility are restricted to a change in channel and those that could otherwise be requested in a minor modification application. *Id.* at 1. The terms "modification" and "change" are used interchangeably in this *Public Notice*.

² Applications will be "cut off" daily for purposes of determining mutual exclusivity. Applicants will be given an opportunity to resolve mutual exclusivity through settlement or engineering amendment that may be submitted during a settlement window to be announced by the Bureau by separate public notice. *Id.* at 1-2.

³ Contained in the Appendix are instructions for accessing and filing FCC Form 2100, Schedules C and E. Applications must be filed electronically via LMS and applicants must pay the applicable application fee. See 47 CFR § 1.1104, Tables 1 and 6.

⁴ See *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010).

⁵ See *Media Bureau Announces the Incorporation of 2020 U.S. Census Population Data into the Commission's TVStudy Software and Requirements to Utilize Such Data Effective August 1, 2024*, Public Notice, DA 24-497 (rel. May 28, 2024). An updated version of the *TVStudy* software (Version 2.3.0) was released May 28, 2024. See *Office of Engineering and Technology Announces Release of Version 2.3.0 of TVStudy*, Public Notice, DA 24-499 (rel. May 28, 2024).

Census Data for purposes of conducting interference analyses. Failure to do so will require amendment and may result in dismissal of applications as defective.⁶

For additional information, contact Shaun Maher, Video Division, Media Bureau at Shaun.Maher@fcc.gov or (202) 418-2324 (legal); or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611 (technical).

-- FCC --

⁶ See 47 CFR § 73.3566 (Defective applications).

APPENDIX
INSTRUCTIONS FOR ACCESSING AND FILING ON LMS

General Log-in Instructions

1. Access the LMS applicant data entry home page here:

<https://enterpriseefiling.fcc.gov/dataentry/login.html>

2. Log-in using the FRN associated with the station.

For more information and help using the LMS system, contact: (877) 480-3201 TTY: (717) 333-2824.

Application For Major Change

1. Click on “Authorizations” tab on the left top of the page.
2. Click on the file number of the current license for the station.
3. Click on “File an Application” button.
4. Select “Major Change of a Licensed Facility (Schedule E)” for Class A stations or “Major Change of a Licensed Facility (Schedule C)” for LPTV/TV Translator stations from the drop-down menu.
5. Complete the application and click “Submit.” **Any application filed prior to August 20, 2024, will be dismissed.**



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. 24-750

Report No. SAT-01843

Friday August 2, 2024

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-ASG-20240729-00164	E	Sirius XM Radio LLC	
Assignment			
Grant of Authority			Effective Date: 07/30/2024

Current Licensee: Sirius XM Radio Inc.

FROM: Sirius XM Radio Inc.

TO: Sirius XM Radio LLC

No. of Station(s) listed: 2

SAT-STA-20240701-00147	E	S3033	Sirius XM Radio Inc.
Special Temporary Authority			
Grant of Authority			Effective Date: 07/26/2024

On July 26, 2024, the Satellite Programs and Policy Division granted special temporary authority, for a period of up to 30 days, to Sirius XM Radio Inc. to conduct in-orbit testing of the SXM-7 space station at the 85.15° W.L. in the 2345-2350 MHz (space-to-Earth) Wireless Communications Service (WCS D Block) frequency band and the 7025-7075 MHz (Earth-to-space) feeder link band.

SAT-STA-20240702-00149	E	S3032	BlackSky Global LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 08/01/2024

Nature of Service: Earth Exploration Satellite Service

On August 1, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to BlackSky Global LLC, for an additional period up to 30 days, to continue to operate the BlackSky Global 15 satellite in orbits at altitudes ranging between 340 km and 385 km.

SAT-STA-20240712-00153	E	S2912	Planet Labs PBC
Special Temporary Authority			
Grant of Authority			Effective Date: 08/01/2024

On August 1, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for an additional period of up to 30 days to operate its Pelican-1 satellite in the 2020-2025 MHz frequency band (Earth-to-space) using different duty cycles than specified in its license.

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	)	
	)	Facility ID Nos. 130178 and 125279
Edge Spectrum, Inc.	)	NAL/Acct. No. 202441420012
	)	FRN: 0026455469
Licensee of Stations KMSX-LD, Sacramento, CA; K36OG-D, Bend, OR	)	LMS File Nos. 0000199643 and 0000203565

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

Adopted: August 2, 2024

Released: August 2, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau) has before it the applications (Applications) of Edge Spectrum, Inc. (Licensee), for renewal of its licenses for low-power television stations KMSX-LD, Sacramento, CA and K36OG-D, Bend, OR (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 license renewal applications for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by August 1, 2022 for KMSX-LD and October 3, 2022 for K36OG-D, each the first day of the fourth full calendar month prior to the Stations' license expiration dates of December 1, 2022 for KMSX-LD and February 1, 2023 for K36OG-D.⁴ However, the Licensee did not file the KMSX-LD Renewal until September 12, 2022 and the K36OG-D Renewal until November 14, 2022. The Licensee provided no explanation as to why the Applications were filed late.

¹ Application of Edge Spectrum, Inc. for Renewal of License, LMS File No. 0000199643 (filed Sept. 12, 2022) (KMSX-LD Renewal); Application of Edge Spectrum, Inc. for Renewal of License, LMS File No. 0000203565 (filed Nov. 14, 2022) (K36OG-D Renewal), (collectively, the "Applications"). Note that the prior call sign of K36OG-D was K49KT-D and the change to K36OG-D took effect on October 25, 2023. Thus, we refer to K36OG-D herein.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020 (2023), 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 for K36OG-D 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.

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 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 August 1, 2022 for KMSX-LD and October 3, 2022 for K36OG-D, as required by section 73.3539(a) of the Rules.¹⁰ The KMSX-LD Renewal was filed on September 12, 2022, and the K36OG-D Renewal was filed on November 14, 2022, both over one month late.

5. *Proposed Forfeiture.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(11) 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 two (2) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee provided no explanation regarding why the Applications were filed late. 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 Licensee’s failure to file timely renewal applications

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)(11), 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)(11); 47 CFR § 1.80(b), paragraph (b)(11), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* n.12.

because, as low-power television stations, the Stations are providing a secondary service.¹⁵ Because the Applications 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.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 Stations served the public interest, convenience, and necessity during the subject license term. We will grant the Applications by separate action.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that **Edge Spectrum, Inc.**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of **\$3,000** for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, **Edge Spectrum, Inc.**, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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.”).

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).

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),²¹ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Edge Spectrum, Inc. must send notice that payment has been made to VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:²²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed FCC 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).²³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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. 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, 47 CFR §§ 1.16 and 1.80(g)(3). The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to VideoNAL@fcc.gov, to assist in processing the response.**

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications

²¹ Payments made using CORES do not require the submission of an FCC Form 159.

²² 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.

²³ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁴
- 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.

13. 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.²⁵

14. 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 20554.²⁶ Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service in the manner specified above in paragraph 12. A copy of the request must also be sent to VideoNAL@fcc.gov.

15. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Edge Spectrum, Inc., c/o Randy Weiss, P.O. Box 54025, Hurst, Texas 76054 and by e-mail to randy@crosstalk.org. A copy will also be sent to Licensee's representative, Susan Hansen, by e-mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

²⁵ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

²⁶ See 47 CFR § 1.1914.

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

In the Matter of	)	
	)	
BAAZ Broadcasting Corporation	)	MB Docket No. 23-356
	)	
Petition for Declaratory Ruling Under Section	)	
310(b)(4) of the Communications Act of 1934, as	)	
Amended	)	

DECLARATORY RULING

Adopted: August 2, 2024

Released: August 2, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) grants a petition for a declaratory ruling (Petition) filed by BAAZ Broadcasting Corporation (BAAZ or Petitioner).¹ BAAZ is the licensee of KNTS(AM), Seattle, Washington (Facility ID No. 87153). The Petition asks the Commission to exercise its discretion to permit indirect foreign ownership of Amar Broadcasting, Inc. (Amar Broadcasting), the proposed controlling U.S. parent of BAAZ, to exceed the 25% benchmarks established in section 310(b)(4) of the Communications Act of 1934, as amended, (the Act)² and sections 1.5000 *et seq.* of the Commission's rules.³ As discussed below, the Petition seeks authority for up to 100% aggregate foreign investment (voting and equity) in Amar Broadcasting, the

¹ Petition for Declaratory Ruling of BAAZ Broadcasting Corporation, Application File No. 0000219514 (filed Aug. 17, 2023); Amendment to Petition for Declaratory Ruling, Application File No. 0000219514 (filed Aug. 25, 2023) (Amended Petition). The Amended Petition was filed in conjunction with an application submitted by BAAZ seeking Commission consent to the transfer of control of the company, the licensee of KNTS(AM), Seattle, Washington, (Facility ID No. 87153). *See* Application BAAZ Broadcasting Corporation for Consent to Transfer Control, Application File No. 0000219514 (filed Aug. 17, 2023) (Application).

² 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).

³ 47 CFR §§ 1.5000 *et seq.* *See 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).

proposed controlling U.S. parent of BAAZ, and specific approval⁴ for Sukhdev S. Dhillon, a citizen of Canada, to hold 100% of the equity and voting ownership in Amar Broadcasting.⁵ No comments or oppositions were filed in response to the Petition.⁶ As discussed below, and consistent with the input 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 Petition, subject to the conditions specified below.⁷

II. BACKGROUND

2. *Pending Transaction and Corporate Structure.* The Commission's approval of the Petition is being sought in connection with the proposed transfer of control of BAAZ, a U.S. corporation registered in the state of Washington, to a newly formed corporation, Amar Broadcasting, a U.S. corporation registered in the state of Washington. Presently, BAAZ is owned 80% by Mohan Cheema, a U.S. citizen, and 20% by Sukhdev S. Dhillon, a Canadian citizen. As a result of the proposed transaction, Amar Broadcasting would acquire 100% of the voting and equity interests in BAAZ and, in turn, would be 100% owned by Sukhdev S. Dhillon.⁸

3. Pursuant to section 1.5001(h) of the Commission's rules,⁹ the Petitioner requests approval of up to an aggregate 100% foreign ownership of the proposed controlling U.S. parent, Amar Broadcasting.¹⁰ In addition, Petitioner requests specific approval for Sukhdev S. Dhillon to hold 100% of the equity and voting of Amar Broadcasting, and indirectly, of BAAZ.¹¹

4. *Public Interest Showing.* Petitioner contends that grant of the Petition is in the public interest because it would, among other things, further the Commission's stated goals of encouraging foreign investment and ownership diversity in U.S. broadcast stations and the continuation of operations by such stations.¹² Petitioner also asserts that it "will remain, a minority-owned broadcaster of Punjabi-language radio programming to the Southeast Asian community in Seattle, Washington," and that the infusion of additional capital resulting from the proposed transaction would allow BAAZ to continue and enhance its provision of both locally-produced and internationally-sourced Punjabi-language programming to Seattle listeners.¹³

⁴ Under section 1.5001(i)(1) of the Commission's rules, petitions 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 licensee'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).

⁵ Amended Petition at 1-5; Application.

⁶ The Petition was placed on public notice on October 20, 2023, with comments due November 20, 2023, and replies due December 5, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by BAAZ Broadcasting Corporation*, Public Notice, MB Docket No. 23-356, DA 23-1001 (Oct. 20, 2023) (*Public Notice*).

⁷ See *infra* at para. 11.

⁸ Amended Petition at 1-5; Application.

⁹ 47 CFR § 1.5001(h).

¹⁰ Amended Petition at 1-7.

¹¹ *Id.*

¹² *Id.* at 5-6.

¹³ *Id.* at 6-7.

5. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the 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 proposed foreign ownership of BAAZ's proposed controlling U.S. parent, Amar Broadcasting.¹⁴ On December 13, 2023, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.¹⁵ Subsequently, on February 8, 2024, the Committee notified the Commission that Petitioner had provided complete responses to the Committee's initial questions and that it was conducting its review to assess whether granting the Petition would pose a risk to the national security or law enforcement interests of the United States.¹⁶ On May 30, 2024, the NTIA submitted a letter to the Commission in which the Committee advised the Commission that it has no recommendation to the Commission at this time and no objection to the Commission granting the Petition.¹⁷

6. *Standard of Review.* We review the 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."¹⁸ 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.¹⁹ 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.²⁰

7. 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.²¹ 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.²² To exercise in a meaningful way the discretion conferred by statute, the

¹⁴ 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)).

¹⁵ Letter from, Mark Goldberg, Attorney Advisor, National Security Division, Department of Justice (DOJ), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-356 (filed Dec. 13, 2023).

¹⁶ Letter from Mark Goldberg, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-356 (filed Feb. 8, 2024).

¹⁷ Letter from Stephanie Weiner, Chief Counsel, NTIA, to Thomas M. Sullivan, Deputy Chief, Office of International Affairs, FCC, MB Docket No. 23-356 (dated May 30, 2024).

¹⁸ 47 U.S.C. § 310(b)(4).

¹⁹ See *id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

²⁰ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

²¹ See generally *id.*

²² *Id.* at 11282, para. 15.

Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.²³

III. DISCUSSION

10. *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 would be served by permitting foreign ownership of Amar Broadcasting, BAAZ's proposed controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act and, consequently, we grant the Petition subject to the conditions described below. 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 BAAZ. We further find that it is in the public interest to grant specific approval for the percentages set out to the individual specified in Section IV below. Specifically, we conclude that grant of the Petition is in the public interest because it, among other things, provides the licensee with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.²⁴

11. *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.²⁵ The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and do not object to the Commission granting it, nor do they request the imposition of any conditions on the grant.²⁶ We also note that no pleadings were filed opposing the Petition.

IV. DECLARATORY RULING

12. Under these circumstances, pursuant to section 310(b) of 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 BAAZ's proposed controlling U.S. parent, Amar Broadcasting, 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% foreign ownership of Amar Broadcasting.

13. *Specific Approval.* We also find no grounds to deny the request for specific approval. Therefore, pursuant to section 1.5001(i) of the Commission's rules,²⁷ this Declaratory Ruling grants specific approval for Sukhdev S. Dhillon, a citizen of Canada, to hold 100% of the equity and voting interests in Amar Broadcasting.

16. *Additional Terms and Conditions.* Under this Declaratory Ruling, the Petitioner has an affirmative duty to monitor its foreign equity and voting interests, calculate those interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,²⁸ and otherwise ensure continuing compliance with the

²³ 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).

²⁴ See Amended Petition at 5-7 (describing public interest benefits arising from approval of the Petition and the related transaction).

²⁵ 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).

²⁶ See Letter from Stephanie Weiner, Chief Counsel, NTIA, to Thomas M. Sullivan, Deputy Chief, Office of International Affairs, FCC, MB Docket No. 23-356 (dated May 30, 2024).

²⁷ 47 CFR § 1.5001(i).

²⁸ 47 CFR §§ 1.5002-1.5003.

provisions of section 310(b) of the Act.²⁹ 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 Petitioner exceeds the terms and conditions of this Declaratory Ruling.³⁰ This includes the requirement that Petitioner 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 for any foreign individual, entity, or group to hold a controlling interest, in the company.³¹ If, at any time, Petitioner 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, Petitioner 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.³² Petitioner may be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.³³

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 CFR §§ 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 Petition for Declaratory Ruling filed by BAAZ Broadcasting Corporation **IS GRANTED** subject to the conditions specified herein.

18. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁹ 47 CFR § 1.5004, note to paragraph (a).

³⁰ 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). This rule section sets out the requirements for when a licensee must seek prior Commission approval 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).

³¹ 47 CFR § 1.5004(a)(1).

³² See 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in BAAZ above the specific approval threshold without Commission approval, BAAZ, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of BAAZ to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

³³ *Id.*

**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	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 2, 2024

Released: August 2, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division, Media Bureau (Division) has before it a Petition for Reconsideration (Petition)¹ requesting to cancel a monetary forfeiture previously issued 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 (collectively, Stations), for its willful violation of section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file the Stations' applications for renewal of license (Application).³ As discussed below, in this *Memorandum Opinion and Order* we grant the Petition, cancel the forfeiture, and instead admonish the Licensee for its violation of the Commission's rules.

II. BACKGROUND

2. On January 10, 2022, the Licensee filed its Application seeking renewal of the Stations licenses. 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." 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. The Licensee provided no explanation in the Application for its untimely filing.

3. On May 20, 2022, the Division issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of \$6,000 against the

¹ Petition for Reconsideration of Bent County, on (filed Sept. 14, 2023) (Petition) on file at LMS File No. 0000179464. The Petition was dated September 11, 2023, but was filed on September 14, 2023. A copy of the Petition was later uploaded by the Licensee as an amendment to the Application. *See infra* note 3.

² 47 CFR § 73.3539(a).

³ *Bent County*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 6388 (Vid. Div., May 20, 2022) (NAL); *Bent County*, Forfeiture Order, DA 23-786 (Vid. Div., Aug. 30, 2023) (FO). *See* Application of Bent County for Renewal of License, LMS File No. 0000179464 (filed Jan 10, 2022; amended Nov. 09, 2023) (Application). 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.

Licensee for its apparent willful 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 cancellation of the proposed forfeiture.⁵ The Licensee failed to file a response or pay the proposed forfeiture. As a result, on August 30, 2023, the Division issued a *Forfeiture Order* finding the Licensee liable for its violation in the amount of \$6,000.⁶

4. On September 14, 2023, the Licensee timely filed the Petition requesting cancellation of the forfeiture due to its inability to pay.⁷ At the request of Bureau staff, on February 9, 2024, the Licensee provided additional financial documentation, which included revenues and operating expenses for calendar years 2021, 2022, and 2023. In each of those years the Licensee operated the Stations using primarily County tax revenue and argues that the forfeiture would be a harsh burden on the tax payers as the fine represents a significant portion of the Stations' annual budget.⁸ According to the Petition, the Stations serve "a very rural agricultural county" with a population of approximately 6,000 people; 20% of which live below the poverty line. The Petition goes on to state that a majority of the residents in the Stations' service areas do not have access to cable service and even if they did, many would be unable to afford it.⁹ As a result, the Stations provide news, weather, and emergency alert notifications that many residents would not otherwise be able to receive due to cost or lack of access to other services.¹⁰

III. DISCUSSION

5. Pursuant to section 1.106 of the Commission's rules, reconsideration is appropriate when, among other circumstances, there is a determination that consideration of the facts or arguments is required in the public interest.¹¹ Although the Licensee failed to file a response to the *NAL* when given an opportunity to do so, we find that consideration of the request given the unique facts presented in the Petition are in the public interest. When taking into account all the facts and circumstances of this case, we find that cancellation of the forfeiture is warranted.

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.¹² Here, we find that based on the financial documents provided, the forfeiture amount would constitute an excessive fine and create a financial hardship. While alone the Stations' financial information may not warrant cancellation of the forfeiture, the Licensee's history of compliance and fact that the Stations are community translators serving rural areas whose residents would otherwise have

⁴ 47 CFR § 73.3539(a). The Commission's base forfeiture amount for the failure to file a required form is \$3,000. 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), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11), note to paragraph (b)(11), section I. In the *NAL*, the Bureau proposed a reduced forfeiture amount of \$6,000, or \$1,500 per station, because, as television translators, the Stations are providing a secondary service. *NAL* at para. 6.

⁵ *NAL* at para. 8.

⁶ *Bent County*, Forfeiture Order, DA 23-786 (Vid. Div., Aug. 30, 2023) (*FO*).

⁷ Petition at 1.

⁸ *Id.* at 1. In the Petition the Licensee contends the forfeiture amounts to nearly 50% of the annual amount budgeted to the Stations. Based on a review of the financial information provide, staff calculated the forfeiture amount represents closer to 40% of the a Station's average annual budget.

⁹ *Id.* at 1

¹⁰ *Id.*

¹¹ See 47 CFR § 1.106(c).

¹² See *NAL* at para. 13.

limited, if any, access to news, weather and emergency alert notifications are unique factors worth considering. Accordingly, when taking all these factors into account, we find that cancellation of the forfeiture is warranted and in the public interest; however, we still find it appropriate to admonish the Licensee for its willful violation of section 73.3539(a) of the Rules.¹³ The Licensee does not dispute that it filed its Application late.

7. We take this opportunity to caution the Licensee that future violations of a similar nature may yield a different result, including imposition of a forfeiture. We also reaffirm our finding that the Stations have met the standard of review for renewal pursuant to section 309(k) of the Act¹⁴ and we will grant the Stations' pending Application.¹⁵

IV. ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 405(a) of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, Bent County's Petition for Reconsideration **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that, pursuant to section 504(b) of the Communications Act of 1934, as amended,¹⁶ and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules,¹⁷ the forfeiture in the amount of \$6,000 issued to Bent County **IS CANCELLED** and Bent County is instead **HEREBY ADMONISHED** for its violation of section 73.3539(a) of the Commission's rules.

10. **IT IS FURTHER ORDERED** that, pursuant to section 309(k) of the of the Communications Act of 1934, as amended, 47 USC § 309(k), the joint application for renewal of licensee, LMS File No. 0000179464, filed by Bent County for TV translator stations K29JL-D, Las Animas, Colorado; K25LE-D, Las Animas, Colorado; K23KN-D, Las Animas, Colorado; and K27KX-D, Las Animas Colorado **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Bent County, County Courthouse 725 Bent 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

¹³ See *Corning Christian Radio Corporation*, Order, 37 FCC Rcd 13300 (MB 2022) (cancelling the \$1,500 forfeiture due to demonstrated inability to pay and admonishing licensee for willful violation of the Commission's rules).

¹⁴ In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act. 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. 47 U.S.C. § 309(k)(1). 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.” 47 U.S.C. § 309(k)(2), (3).

¹⁵ See *NAL* at para. 8; *FO* at n.12.

¹⁶ 47 U.S.C. § 504(b).

¹⁷ 47 CFR §§ 0.61, 0.204, 0.283, 1.80.



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 24-755
Released: August 5, 2024

FCC ANNOUNCES ANTICIPATED RENEWAL OF ITS CONSUMER ADVISORY COMMITTEE AND SOLICITS NOMINATIONS FOR MEMBERSHIP

By this Public Notice, the Federal Communications Commission (Commission) announces the anticipated rechartering of the Consumer Advisory Committee (Committee) and solicits nominations for membership. The Commission intends to recharter the Committee for a period of two (2) years following consultation with the Committee Management Secretariat, General Service Administration. It is anticipated that after this consultation, the renewed charter will become effective on or before October 13, 2024. Nominations for membership are due by September 6, 2024.

PURPOSE AND FUNCTION

The Committee's mission is to make recommendations to the Commission regarding topics of particular interest to consumers that will be specified by the Commission. For additional background about the Committee, see its website: www.fcc.gov/consumer-advisory-committee.

BACKGROUND

The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. Chapter 10. Each meeting of the Committee will be open to the public. A notice of each meeting will be published in the Federal Register at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and will be made available for public inspection. All meetings will be fully accessible to individuals with disabilities.

Members will serve at the discretion of the Chairperson of the Commission. The Commission will determine the appropriate Committee size necessary to effectively accomplish the Committee's work. While there is no required number of meetings, the Committee typically holds meetings three times per calendar year, to be conducted in Washington, D.C., and/or by video conference.

Members of the Committee will be expected to participate in at least one working group. The time commitment for participation in any such group may be substantial. However, working group meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the Designated Federal Officer of the Committee.

WHO MAY APPLY FOR MEMBERSHIP AND OBLIGATIONS OF MEMBERS

The Commission seeks nominations from interested nonprofit organizations, corporations, trade associations, government agencies, or other entities from both the public and private sectors, who wish to

be considered for Committee membership for a two-year term of service. Selections will be made based on factors such as expertise and diversity of viewpoints that are necessary to effectively address the topics before the Committee.

Individuals who do not represent an organization, corporation, trade association, or entity, but who possess expertise valuable to the Committee's work may also apply. However, any applicants who want to serve in their individual capacities should be aware that government ethics rules may require detailed disclosures as part of the consideration of their application to serve as independent subject matter experts, and if appointed, such individuals would be considered Special Government Employees (SGEs). Federally registered lobbyists are not eligible to serve as SGEs. The Commission's Office of General Counsel conducts ethics reviews of all organizational and individual members of the Committee or its working groups. SGEs, in particular, 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 forms 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.

NOMINATION PROCEDURE, DEADLINE, AND MEMBER APPOINTMENTS

All nominations must be received by the Commission by no later than September 6, 2024, and should be submitted via an online nomination form at www.fcc.gov/consumer-advisory-committee unless use of that form would present a hardship, in which case the information and documents specified below may be submitted by email to CAC@fcc.gov. Nominations will be acknowledged shortly after receipt. Because mail delivery may be delayed by security screening and precautionary measures due to the COVID-19 pandemic, interested parties are required to submit applications online.

APPLICATION PROCEDURE FOR INDIVIDUALS

Individuals seeking to serve as Special Government Employee members of the Committee should include the following application information:

- The individual applicant's name, mailing address, e-mail address and telephone number;
- A description of any organization by whom the applicant is employed;
- A statement summarizing the individual applicant's qualifications, including specific knowledge or expertise that is relevant to the Committee, and reasons why the individual applicant should be appointed to the Committee or to a working group;
- A statement that the applicant is not a registered lobbyist;
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission;
- A statement that the applicant does not have clients with matters before the Commission or that may come before the Commission;
- A statement indicating a willingness to serve on the Committee for a two-year term, a commitment to attend at least three meetings per year (to be conducted in Washington, DC, and/or by video conference);
- 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 statement indicating whether the individual has served on the Committee previously, the dates of such service and any working group(s) in which the individual applicant participated; and,
- A current resume that describes the individual applicant's educational background and professional experience.

Further, as noted above, financial and other additional disclosures may also apply to individual applicants.

APPLICATION PROCEDURE FOR ORGANIZATIONS

Applications from nonprofit organizations, corporations, trade associations, government agencies, or other entities proposing a nominee to serve as a primary representative or alternative representative should include the following:

- The name of the entity nominating a representative and alternate representative (if any) to serve on the Committee on its behalf;
- A statement indicating whether the entity has previously had representatives that served on the Committee, the dates of such service, and any working group(s) in which the entity's representatives participated;
- A statement indicating the nature of the entity's interests and the constituency represented by the organizational applicant (*e.g.*, consumer advocate, disability advocate, government regulator, tribal government, industry, trade association, etc.);
- The name of the entity's proposed primary representative, including title, postal mailing address, email address, and telephone number;
- The name of the entity's proposed alternate representative (if any), including title, postal mailing address, email address, and telephone number;
- Current resumes of the entity's proposed primary and alternate representatives describing their educational background and professional experience;
- A statement summarizing the nominees' qualifications and reasons why the nominees should be appointed to represent the organizational applicant on the Committee;
- A statement by the entity indicating a willingness to have its representatives serve on the Committee for a two-year term, a commitment that its representative or alternative representative will attend at least three meetings per year (to be conducted in Washington, D.C., and/or by video conference);
- A commitment that its representative or alternate representative will participate in at least one working group;
- An acknowledgement that neither the entity nor its representatives will receive reimbursement of travel expenses or payment of honoraria from the Commission; and,
- A narrative statement detailing the organizational applicant's previous involvement with issues relevant to the Committee's work and each applicant's ability and willingness to contribute substantively to the Committee's deliberations through its nominee(s).

An organization, company, or other entity nominating a primary or alternate representative to serve on its behalf on the Committee must submit written confirmation by an authorized person (*e.g.*, an official of the organization, company, or other entity) that such entity wants the representative to serve on its behalf. The nominating official must possess the executive authority or hold a sufficiently high-level position within the organization or company to select a representative whose actions will be legally binding on the organization or company. 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 representative's name], who is currently [an employee of/consultant/attorney to the company] to serve as our representative on the FCC Consumer Advisory Committee."

Where nominees are 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 where the applicant or

nominee is individually a party to such a contract or providing services for the benefit of the FCC to other entities or organizations under such a contract, the application 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 Consumer Advisory Committee.

All nominees are also required to disclose whether they represent clients in matters before the FCC or in matters that may come before the Committee, other than representing the organizational applicant that has nominated them for service on the Committee, and nominees shall provide all relevant details of any such representation.

APPLICATION PROCEDURES FOR CURRENT MEMBERS

The Commission appreciates the service of the current members of the CAC, a diverse body representing a broad spectrum of consumer interests and viewpoints. Because many of the tasks of the current CAC may continue into its next term, the Commission particularly welcomes the applications of those members who wish to continue their service, while also encouraging applications from new individuals and entities whose perspectives may broaden even further the viewpoints represented on the current CAC. Below are application procedures that apply to current CAC members who wish to apply for another term. The Commission will consider the applications of current members together with those of all other applicants in light of the Commission's ongoing commitment to appoint a committee that reflects a range of expertise, balance of viewpoints, diversity, equity, inclusion, and accessibility.

Current CAC members who wish to serve again as Special Government Employee members need only submit any updates to the materials they submitted as part of their application to serve during the current CAC. Current members who serve as representatives of organizations who wish to serve again in the same capacity need only submit (i) the written statements by appropriate persons in their organization confirming that the organization wants the member to continue as its representative, (ii) any applicable information pertaining to ongoing contracts with the FCC (which is needed to ensure compliance with procurement regulations), and (iii) updates to any previously submitted application materials (such as resumes, contact information, etc.).

All Committee 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 in activities regulated by the Commission.

The Commission may solicit nominations by methods other than this Public Notice, but all candidates will be subject to the same evaluation criteria. After the Commission has reviewed nominations, it will notify all nominees in writing concerning the disposition of their applications, and it will release a Public Notice announcing appointment of the Committee members and the date of the Committee's first meeting.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to: FCC504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

For further information contact:

Keyla Hernandez-Ulloa, Consumer Advisory Committee (CAC) Designated Federal Officer (DFO) and David M. Pérez, CAC Deputy DFO, 202-418- 0664, CAC@fcc.gov.

- FCC -

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

In the Matter of	)	
	)	ICFS File Nos.: SAT-LOA-20200413-00034
AST&Science LLC	)	SAT-AMD-20200727-00088
	)	SAT-AMD-20201028-00126
Application to Launch and Operate a Non-	)	SAT-AMD-20230717-00172
Geostationary Orbit V-band System	)	SAT-AMD-20240311-00053
	)	
	)	Call Sign: S3065
	)	

ORDER AND AUTHORIZATION

Adopted: August 2, 2024

Released: August 2, 2024

By the Deputy Chief and Chief of Staff, Space Bureau:

I. INTRODUCTION

1. In this Order and Authorization, we grant in part, with conditions, the request of AST&Science LLC (AST) to launch and operate its planned constellation of non-geostationary orbit (NGSO) satellites in low-Earth orbit (LEO).¹ Specifically, we grant, with conditions, operations for five satellites which would operate feeder links and nominal telemetry, tracking, and command (TT&C) operations using frequencies in the 37.5-42 GHz (space-to-Earth), 47.2-50.2 GHz (Earth-to-space), and 50.4-51.4 GHz (Earth-to-space) bands. We further grant AST authority to conduct TT&C with its authorized satellites in the 430-440 MHz (space-to-Earth and Earth-to-space), 2025-2110 MHz (Earth-to-space), and 2200-2290 MHz (space-to-Earth) bands. In connection with this grant, we address three Petitions to Deny filed by CTIA, T-Mobile USA, Inc. (T-Mobile), and Verizon, the informal objection filed by Hughes Network Systems, LLC, EchoStar Mobile Limited, and EchoStar Global Australia Pty Ltd (collectively, EchoStar), and the various comments and letters filed regarding this application. We defer consideration of AST's request for authority to AST to deploy and operate the other 243 requested satellites and also defer grant of authority to operate on any additional frequencies, including any bands allocated to terrestrial services that it would ultimately seek to utilize for the provision of Supplemental Coverage from Space (SCS).²

¹ This application, as amended in the first instance, was placed on public notice on October 2, 2020. *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01501 (Oct. 2, 2020). This application, as amended in the second instance, was placed on public notice on November 6, 2020. *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01509 (Nov. 6, 2020). This application, as amended in the third and fourth instances, was placed on public notice and was accepted for filing in part on April 5, 2024. *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Report No. SAT-01812 (Apr. 5, 2024). This application, as amended, has also been designated as "permit but disclose." *Satellite Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-01497 (Sept. 11, 2020); *Satellite Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-01511 (Nov. 13, 2020); *Satellite Licensing Division and Satellite Programs and Policy Division Information, Actions Taken*, Report No. SAT-01812 (Apr. 5, 2024).

² AST has requested to operate in the 617.0-960.0 MHz (space-to-Earth), 663.0-915.0 MHz (Earth-to-space), 1805.0 MHz-2200.0 MHz (space-to-Earth), and 1710.0-2010.0 MHz (Earth-to-space) bands. See ICFS File No. SAT-AMD-20240311-00053, Schedule S at 3; see generally *Single Network Future: Supplemental Coverage from Space*, (continued....)

II. BACKGROUND

2. *Petition.* On April 13, 2020, AST filed an application for addition to the Permitted List of its planned constellation of 243 satellites, operating in LEO paths,³ licensed by the administration of Papua New Guinea and providing service to mobile telephones and other personal devices such as tablets connected through the mobile-phone system using frequencies in the 37.5-42.5 GHz (space-to-Earth), 45.5-47.0 GHz, 47.2-50.2 GHz, and 50.4-51.4 GHz (Earth-to-space) (collectively, the V-band) bands for communications with gateway earth stations and the 617-960 MHz and 1805-2200 MHz (space-to-Earth) and 663-915 MHz and 1710-2010 MHz (Earth-to-space) bands for direct communications with consumer devices.⁴

3. *Acceptance for Filing in Part and Processing Round.* On October 2, 2020, the International Bureau, Satellite Policy Branch,⁵ accepted AST's application for filing.⁶ On August 4, 2021, the International Bureau initiated the second V-band processing round, which specifically included AST's application, for additional NGSO-like applications and petitions in the 37.5-40.0 GHz, 40-42 GHz, 47.2-50.2 GHz, and 50.4-51.4 GHz bands, with a cut-off date of November 4, 2021.⁷

4. *Amendments to Petition.* On August 27, 2020, AST filed an amendment to its application in response to an inquiry from the Commission.⁸ In the amendment, AST clarified that it intended to provide direct communications between its space stations and consumer devices in the 1930-1990 MHz, 2110-2180 MHz, and 2350-2360 MHz bands (space-to-Earth) and the 1710-1780 MHz, 1850-1910 MHz,

Report and Order and Further Notice of Proposed Rulemaking, FCC 24-28 (Mar. 14, 2024) (*SCS R&O*). Although some of the bands authorized for operation herein may include a terrestrial wireless allocation, nothing in this limited grant of authority provides SCS authority to AST.

³ ICFS File No. SAT-LOA-20200413-00034, Narrative at 3, Schedule S.

⁴ ICFS File No. SAT-LOA-20200413-00034, Schedule S.

⁵ 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 dissolved. *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, 38 FCC Rcd 608, 609, para. 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.

⁶ *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01501 (Oct. 2, 2020).

⁷ *IB Opens New V-band Processing Round for NGSO FSS Systems*, Public Notice, 36 FCC Rcd 12148 (IB 2021). This processing round is separate from the processing rounds for NGSO-like satellite applications or petitions for operations in frequencies in the Ku- and Ka-band. *See Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, and 29.5-30.0 GHz Bands*, Public Notice, 31 FCC Rcd 7666 (IB 2016); *Applications Accepted for Filing; Cut-off Established for Additional NGSO-like Satellite Applications or Petitions for Operations in the 12.75-13.25 GHz, 13.85-14.0 GHz, 18.6-18.8 GHz, 19.3-20.2 GHz, and 29.1-29.5 GHz Bands*, Public Notice, 32 FCC Rcd 4180 (IB 2017); *Cut-Off Established for Additional NGSO FSS Applications or Petitions for Operations in the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.8-14.5 GHz, 17.7-18.6 GHz, 18.8-20.2 GHz, and 27.5-30 GHz Bands*, Public Notice, 35 FCC Rcd 2881 (IB 2020). This processing round is also separate from the first V-band processing round, which was initiated on November 1, 2016, by the International Bureau and had a cut-off date of March 1, 2017. *See Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 37.5-40.0 GHz, 40.0-42.0 GHz, 47.2-50.2 GHz, and 50.4-51.4 GHz Bands*, Public Notice, 31 FCC Rcd 11957 (IB 2016).

⁸ ICFS File No. SAT-AMD-20200727-00088.

and 2305-2320 MHz (Earth-to-space) bands.⁹ On October 28, 2020, AST filed an amendment to its application withdrawing its previous amendment and clarifying that it sought authorization only for satellite operations in the V-band.¹⁰ AST stated that it would conduct all communications with consumer devices through lease arrangements with licensed mobile service providers.¹¹ On July 17, 2023, AST filed an amendment seeking authorization to utilize bands allocated to terrestrial services in certain 850 MHz cellular A and B block spectrum and certain Lower 700 MHz B and C block spectrum in the United States to offer SCS pursuant to its partnership and corresponding lease agreement with AT&T.¹²

5. *Application for U.S. License.* On March 11, 2024, AST filed an amendment seeking to change its previously filed request for U.S. market access to a request for a U.S. license that would authorize deployment and operations of the SpaceMobile system.¹³ AST specified that five satellites would be those first launched as part of the planned commercial SpaceMobile system.¹⁴ AST also requested authority for its satellites to conduct TT&C operations during LEOP and TT&C in the S-band and UHF band with earth stations outside the United States.¹⁵ AST further clarified the frequencies on which AST requests to provide SCS and specified the bands which AST seeks to use for direct-to-cell operations outside the United States, but AST requested that the Commission defer action on the portion of the request related to use of bands allocated to terrestrial services for SCS.¹⁶

III. DISCUSSION

6. After review of the record, we conclude that a limited grant in part of AST's application, authorizing AST to deploy and operate five satellites, as conditioned, will serve the public interest.¹⁷ These satellites will operate on one plane with mean anomalies of 216 degrees, 126 degrees, 40 degrees, 32 degrees, and 306 degrees with an apogee altitude of 525 kilometers (+/- 25 kilometers), a perigee altitude of 515 kilometers (+/- 25 kilometers), and an inclination of 53.0 degrees (+/- 1 degrees) and may operate down to an altitude of 425 kilometers.¹⁸ We defer consideration of AST's request to operate an additional 243 satellites and to operate in bands allocated to terrestrial services for SCS. Below we discuss the various issues raised by AST's application – including the Petitions to Deny filed by CTIA, T-Mobile, and Verizon,¹⁹ orbital debris considerations, and the informal objections and comments filed in

⁹ *Id.*

¹⁰ ICFS File No. SAT-AMD 20201028-00126.

¹¹ *Id.*

¹² ICFS File No. SAT-AMD-20230717-00172; *see also* ULS File No. 0010538493 (lease application).

¹³ ICFS File No. SAT-AMD-20240311-00053.

¹⁴ *See* ICFS File No. SAT-AMD-20240311-00053, Narrative at 6.

¹⁵ *See* ICFS File No. SAT-AMD-20240311-00053, Narrative at 7-8.

¹⁶ *See id.* at 7.

¹⁷ In this document, the term “United States” refers to the contiguous United States, as well as Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and all U.S. territories.

¹⁸ AST specified in its fourth amendment to the application that these five satellites would be deployed to an altitude of 520 km (+/- 7 km) and inclination of 53 degrees (+/- 0.1 degrees) and would be operated at an altitude of 515-525 km and with an inclination angle of 53 degrees. *See* ICFS File No. SAT-AMD-20240311-00053, Narrative at 6; Letter from Timothy Bransford, Counsel, AST, to Marlene H. Dortch, Secretary, FCC at 1 (dated Mar. 29, 2024) (AST March 29 Letter). These orbital parameters have been finalized following coordination with Federal operators.

¹⁹ CTIA, Petition to Deny (CTIA Petition); T-Mobile, Petition to Deny (T-Mobile Petition); Verizon, Petition to Deny (Verizon Petition). AST argues that we should dismiss the various Petitions to Deny for lack of standing and mootness. *See* AST Consolidated Response at 12. However, we consider all comments and petitions filed on part (continued....)

the proceeding. We also discuss potential interference concerns and adopt related conditions.

7. *Public Interest Benefits.* We conclude that it is in the public interest for AST to begin deploying its satellites with the ultimate goal of testing an SCS-capable system, subject to additional approvals. AST aspires in the future to provide nationwide connectivity, including in rural areas and in areas where geographic and economic challenges have made it difficult, costly, and at times, physically impossible to install cell towers or fiber.²⁰ AST states that its goal for such operations is to ultimately expand our nation's ability to provide critical communications services to Americans and our first responders during times of national emergency and natural disasters.²¹ While this grant does not authorize any operations or testing for SCS,²² we believe that the deployment of five satellites under this limited grant, subject to additional approvals, will enable AST to request authority to further test this still-emerging technology.²³ Furthermore, we are not merely relying on the future "promise" of AST to provide mobile service as the basis to satisfy its obligation under the public interest standard.²⁴ AST has

25 applications without the need for petitioners to address injury. AST further submits that the Hughes Objection regarding the Lynk application fails to meet the requirements of section 25.154(a)(4) because it does not contain facts related to AST. *See* ICFS File No. SAT-LOA-20200413-00034, Response and Opposition to Petition to Deny at 5 (filed Oct. 22, 2020) (AST Response and Opposition); Hughes Objection (filed Oct. 12, 2020). Since most of the facts contained within the informal objection to the Lynk application are not relevant to the AST application, we consider only facts specific to AST in review of AST's application. AST also argues that the Hughes Objection is untimely and should be considered an informal objection. *See* AST Response and Opposition at 4. We have found the Hughes Objection to be an informal objection, due to the lack of affidavit, other factors aside. *See Lynk Order*, para. 4, n.14.

²⁰ *See* ICFS File No. SAT-LOA-20200413-00034, Narrative at iv; Letter from Wesley Bownds, Chairman, Midland Development Corporation, to Marlene H. Dortch, Secretary, FCC at 1 (dated Oct. 7, 2020); Letter from Eric W. Stallmer, President, Commercial Spaceflight Federation, to Marlene H. Dortch, Secretary, FCC at 1 (dated Oct. 19, 2020); Letter from Brendon Kim, Head, Samsung NEXT Fund LLC (Samsung NEXT), to Marlene H. Dortch, Secretary, FCC at 1 (dated Oct. 14, 2020); Letter from Azita Arvani, General Manager, Rakuten Mobile Americas, to Marlene H. Dortch, Secretary, FCC at 1 (dated Nov. 1, 2020); Letter from Chris Van Hollen, United States Senator, to Ajit V. Pai, Chairman, FCC at 1 (dated Nov. 16, 2020); Letter from K. Michael Conaway, Member of Congress, to Ajit V. Pai, Chairman, FCC at 1 (dated Oct. 13, 2020) (Conaway Letter); Letter from Ted Cruz, United States Senator, to Ajit V. Pai, Chairman, FCC at 1 (dated Oct. 21, 2020) (Cruz Letter); Letter from Benjamin L. Cardin, United States Senator, to Ajit V. Pai, Chairman, FCC at 1 (dated Oct. 30, 2020); Letter from Michael P. Goggin, AT&T Services, Inc. (AT&T), to Marlene H. Dortch, Secretary, FCC at 1 (dated Feb. 22, 2021) (AT&T Letter).

²¹ *See* ICFS File No. SAT-LOA-20200413-00034, Narrative at iv; Conaway Letter at 1; Cruz Letter at 1; AT&T Letter at 1.

²² While we acknowledge some parties have objected to the public interest implications of AST providing direct-to-cell service, we are not authorizing such service in the instant grant. *See, e.g.,* T-Mobile Petition at 12; *see also* Letter from J.G. Harrington, Counsel, Hughes, to Marlene H. Dortch, Secretary, FCC, Attachment at 2 (dated Mar. 9, 2022) (Hughes March 9 Ex Parte); CTIA Petition at 9-10; Verizon Petition at 3, 11-12; T-Mobile Petition at 11-12; Comments of Kuiper Systems LLC at 2-3 (Kuiper Comments). As discussed below, AST, in coordination with its terrestrial partner(s), must file additional information before the Commission can consider a request for SCS authority. *See infra* para. 15.

²³ For example, we note that SpaceX is currently authorized under the Commission's experimental framework to conduct limited testing with "direct-to-cell" capabilities on a subset of its satellites. *See, e.g.,* ELS File No. 0519-EX-ST-2024 (granted Mar. 29, 2024).

²⁴ *See* Reply in Support of Verizon's Petition to Deny at 6 (Verizon Reply); *see also* Hughes March 9 Ex Parte, Attachment at 2 ("AST has not shown that its proposed constellation would be sufficient to provide meaningful service"); Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC, Attachment at 1 (dated Jan. 8, 2021) (EchoStar January 8 Ex Parte) ("Absent a viable plan to access additional spectrum for service to end users, AST's proposal for V-band FSS gateway operations is insufficient and fatally defective.").

provided information that demonstrates that, with the operations authorized by this limited grant of authority, in combination with potential future experimental authority that we do not consider today, it would be able to provide some experimental connectivity,²⁵ and that AST has a legitimate business interest in using the V-band to support such operations with five satellites, as well as use of the other authorized frequencies for TT&C.²⁶

8. *V-band.* We have had the opportunity to review AST's application as part of the second V-band processing round alongside other applications for systems seeking to operate in the V-band.²⁷ We grant AST authority to perform fixed-satellite service (FSS) operations in each requested V-band frequency with the five satellites authorized in this grant.²⁸ We first grant AST's request to operate in the 37.5-40.0 GHz (space-to-Earth) band. The 37.5-40.0 GHz band is currently allocated to the terrestrial fixed and mobile services and to FSS on a primary basis. It is shared with the terrestrial Upper Microwave Flexible Use Service (UMFUS) authorized under part 30 of the Commission's rules.²⁹ We also grant AST's request to operate in the 40-42 GHz portion of the V-band. The entirety of the band is currently allocated in the U.S. Table of Allocations and internationally for FSS, and parts of the band are shared with fixed service, mobile service, mobile-satellite service (MSS), broadcasting service, and broadcasting-satellite service. Unlike in the 37.5-40 GHz band, terrestrial operations are not authorized in the 40-42 GHz band.³⁰ In accordance with the U.S. Table of Frequency Allocations, in the 40.5-42 GHz portion of the band, AST must take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference.³¹ Furthermore, we grant AST's request to operate in the 47.2-50.2 GHz (Earth-to-space) band. The 47.2-48.2 GHz portion of the V-band is currently allocated in the U.S. Table of Allocations for FSS, fixed service, and mobile service, limited to non-Federal stations, and the 48.2-50.2 GHz portion is allocated for these same services for both Federal and non-Federal stations.

²⁵ See Letter from Timothy Bransford and Denise Wood, Counsel, AST, to Marlene H. Dortch, Secretary, FCC at 1-2 (dated Aug. 1, 2024) (AST August 1 Letter); Letter from Timothy Bransford and Denise Wood, Counsel, AST, to Marlene H. Dortch, Secretary, FCC at 2 (dated May 21, 2024); Letter from Timothy Bransford and Denise Wood, Counsel, AST, to Marlene H. Dortch, Secretary, FCC at 2 (dated May 13, 2024).

²⁶ See, e.g., Letter from Timothy Bransford and Denise Wood, Counsel, AST, to Marlene H. Dortch, Secretary, FCC (dated May 13, 2024); Letter from Vikram Ravel, Head of Global Regulatory Affairs, AST, to Marlene H. Dortch, Secretary, FCC at 1 (dated Mar. 24, 2022) (AST March 24 Ex Parte).

²⁷ AST initially submitted a waiver request of the Commission's processing round rules, 47 CFR § 25.157(c), for its proposed V-band operations. See ICFS File No. SAT-LOA-20200413-00034, Narrative at 11-14. Various parties requested that AST's V-band application undergo a processing round, and some suggested limitations on AST's V-band operations in the alternative. Because AST's application ultimately was included in the second V-band processing round, we find AST's waiver request moot and those comments not relevant. Relatedly, AST's request for waiver of the Commission's mutual exclusivity rule, 47 CFR § 25.155(b), is also moot. See ICFS File No. SAT-LOA-20200413-00034, Narrative at 14.

²⁸ Although AST initially requested authority to also operate in the 42.0-42.5 GHz and 45.5-47.0 GHz bands, which were outside of the scope of the 2021 V-band processing round, AST confirms that it no longer seeks authority to operate in those bands. See AST March 29 Letter at 1. As a result, we also dismiss as moot AST's request for a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to operate on those frequencies. See ICFS File No. SAT-LOA-20200413-00034, Narrative at 7-8.

²⁹ 47 CFR pt. 30.

³⁰ *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations*, Second Report and Order, 18 FCC Rcd 25428, 25432, 25433-25434, paras. 8, 12-14 (2003).

³¹ See 47 CFR § 2.106(a), (c)(211).

Like the 37.5-40.0 GHz band, the 47.2-48.2 GHz band is also authorized for UMFUS.³² We additionally grant AST's request to operate in the 50.4-51.4 GHz (Earth-to-space) band. This band is allocated to FSS, fixed service, and mobile service, and MSS for both Federal and non-Federal stations in the United States and for those same services internationally, with MSS allocated on a secondary basis.

9. We find that AST's feeder link and nominal TT&C operations in the V-band can be classified as FSS. CTIA and Verizon question AST's characterization of its V-band operations as FSS rather than MSS, given that AST seeks for SpaceMobile to eventually operate in the MSS.³³ Verizon argues that FSS allocations are separate from MSS and other satellite allocations to ensure that interference is not caused among disparate uses.³⁴ Verizon adds that the service AST proposes to offer is a fundamentally different use case than that intended by the Commission for parts 22, 24, 27, and 30.³⁵ However, we find AST's proposed operations in the V-band can be categorized as FSS, since AST's satellites will be communicating directly with fixed earth stations when performing feeder link and nominal TT&C operations.³⁶ Similarly, the Commission's rules clarify that TT&C signals may be transmitted in frequencies within the assigned bands that are at a band edge, and here AST will be performing TT&C on the same frequencies authorized for feeder link operations.³⁷ As such, AST's proposed V-band operations will conform with the Commission's rules, including the U.S. Table of Frequency Allocations.³⁸

10. Some commenters claim that AST's proposed use of the 37.5-40.0 GHz band appears to exceed the power flux-density (PFD) limits for the band.³⁹ CTIA further argues that AST should provide an updated Schedule S that is consistent with the Commission's PFD restrictions.⁴⁰ However, AST responded that commenters incorrectly analyzed AST's PFD emissions.⁴¹ AST also filed an updated Schedule S and Technical Annex with updated PFD and maximum EIRP density values for V-band operations, and no parties have commented on this matter as it relates to the recently updated filings.⁴² AST further certifies in its more recent filings that its PFD emissions will not exceed the limits in section 25.208(r) of the Commission's rules, and we are satisfied with AST's showing that it will not exceed the PFD limits in section 25.208(r) of the Commission's rules.⁴³

11. Some commenters argue that we should require AST to comply with the UMFUS framework for sharing between AST's earth stations and UMFUS⁴⁴ and further argue that AST has not

³² 47 CFR § 30.4(g).

³³ See CTIA Petition at 9; Verizon Petition at 11.

³⁴ See Verizon Petition at 12-13.

³⁵ See *id.* at 13.

³⁶ FSS 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. See 47 CFR § 2.1.

³⁷ See 47 CFR § 25.202(g).

³⁸ But see CTIA Petition at 9; Verizon Petition at 12-13.

³⁹ See Verizon Petition at 11; CTIA Petition at 10-11; T-Mobile Petition at 9.

⁴⁰ See CTIA Reply at 10.

⁴¹ See AST Consolidated Response at 15-16.

⁴² See ICFS File No. SAT-LOA-20200413-00034, Schedule S.

⁴³ See ICFS File No. SAT-AMD-20240311-00053, Attach. A at 7.

⁴⁴ See 47 CFR § 25.136.

complied with all related procedures.⁴⁵ The fact that AST has not yet completed certain procedures consistent with the UMFUS sharing framework does not preclude grant of a space station license.⁴⁶ We defer consideration of arguments related to earth station siting until such time as we are reviewing individual earth station applications.

12. Also, we decline to impose a condition requiring that AST successfully complete international coordination, as EchoStar requests.⁴⁷ First, we note that EchoStar argued in favor of an international coordination requirement alongside concerns regarding AST's initial licensing application and related International Telecommunication Union (ITU) filing that was submitted through a foreign administration. However, as discussed, AST has since applied for, and is granted in part, a U.S. license, and AST has submitted materials supporting an accompanying ITU filing to the United States, which in turn we have found acceptable under our rules to submit to the ITU. Likewise, in 2023, the Commission adopted rules for satellite spectrum sharing among NGSO FSS systems⁴⁸ requiring good-faith coordination among all NGSO FSS grantees.⁴⁹ This grant includes a condition that AST's operations must be conducted in accordance with our updated NGSO FSS spectrum sharing rules.⁵⁰

13. *S-band.* We grant AST authority to conduct TT&C in the 2025-2110 MHz (Earth-to-space) and 2200-2290 MHz (space-to-Earth) bands with earth stations outside the United States, including for LEOP, with five satellites authorized in this grant.⁵¹ In the International Table of Frequency Allocations, the 2025-2110 MHz band is allocated to the space operation service (Earth-to-space), *inter alia*, on a primary basis. Similarly, in the International Table of Frequency Allocations, the 2200-2290 MHz (space-to-Earth) band is allocated to the space operation service (Earth-to-space), *inter alia*, on a primary basis. AST will only conduct such operations with earth stations outside of the United States under terms of an agreement with a teleport company that holds S-band authorizations in relevant foreign jurisdictions.⁵² We authorize AST to operate in the S-band for TT&C, subject to the laws, regulations, and requirements applicable to any such operations in foreign jurisdictions.

14. *UHF Band.* AST also seeks to conduct TT&C in the 430-440 MHz (space-to-Earth and Earth-to-space) band outside the United States, including for LEOP, with five satellites authorized in this grant. AST plans to perform such operations pursuant to agreements with authorized third-party teleport operators.⁵³ The International Table of Frequency Allocations has allocations for amateur, radiolocation,

⁴⁵ See *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016); CTIA Petition at 8; Verizon Petition at 10-11; T-Mobile Petition at 14-16.

⁴⁶ See also AST Consolidated Response at 7.

⁴⁷ See Objection of EchoStar at 7 (EchoStar Objection); Reply Comments of EchoStar at 5 (EchoStar Reply). Although EchoStar's pleading was titled "Petition to Dismiss or Deny," we will consider it an informal objection because it lacks an affidavit required by our rules. 47 CFR § 25.154(a)(4), (b)(1).

⁴⁸ *Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems*, Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 3699 (2023).

⁴⁹ See 47 CFR § 25.261(b); *id.* at 3709.

⁵⁰ See 47 CFR § 25.261; see also Kuiper Comments at 4; Telesat Comments at 2.

⁵¹ A few satellite operators address the prospect of SpaceMobile MSS operations in S-band frequencies. See EchoStar Objection at 4, 17-18; Letter from Stephen J. Berman, Counsel, Globalstar, Inc., to Marlene H. Dortch, Secretary, FCC at 1-2 (dated Nov. 2, 2020); Letter from Karis A. Hastings, Counsel, Sirius XM Radio Inc. (Sirius XM), to Marlene H. Dortch, Secretary, FCC at 2 (dated Nov. 2, 2022); see also Letter from Mindel De La Torre, Chief Regulatory and International Strategy Officer, Omnispace, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jul. 8, 2022). However, this grant is only limited to TT&C operations in the S-band.

⁵² See ICFS File No. SAT-AMD-20240311-00053, Narrative at 8; AST Consolidated Response at 17.

⁵³ See ICFS File No. SAT-AMD-20240311-00053, Narrative at 8.

and Earth exploration-satellite services in the 430-440 MHz band. However, there is no relevant service classification for AST's TT&C operations. Accordingly, AST submitted an interference analysis to demonstrate that it will not cause harmful interference to other operations in conformance with the ITU Radio Regulations.⁵⁴ When operating in the 430-440 MHz band, AST shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the ITU Radio Regulations. Furthermore, in the unforeseen and unlikely case that harmful interference occurs, AST confirms that it is capable of ceasing transmissions from its satellites as required under section 25.207 of the Commission's rules, and consistent with notification of a non-conforming frequency use, which requires that any harmful interference be eliminated immediately.⁵⁵ We conclude that AST's demonstrations are sufficient to authorize a limited, non-conforming use, and therefore grant AST authority to conduct TT&C operations in the 430-440 MHz band with earth stations outside the United States, including during LEOP, subject to the laws, regulations, and requirements applicable to such operations in any foreign jurisdictions.

15. *Other Bands Allocated to Terrestrial Services for SCS.* In accordance with AST's request,⁵⁶ we defer consideration of AST's request to operate in 704-710 MHz, 710-716 MHz, 824-835 and 845-846.5 MHz, 835-845 MHz and 846.5-849 MHz Service Links (Earth-to-space) and 734-740 MHz, 740-746 MHz, 869-880 and 890-891.5 MHz, and 880-890 and 891.5-894 MHz Service Links (space to Earth),⁵⁷ and we emphasize that this grant does not include any authority to transmit or receive in the 617.0-960.0 MHz or 1805.0 MHz-2200.0 MHz bands inside or outside of the United States other than for TT&C operations in the 2025-2110 MHz band (Earth-to-space) outside the United States as specified herein.⁵⁸ With respect to the pending request for SCS, AST shall file all required information outlined in the *SCS R&O* and any additional information requested by the Commission.⁵⁹ Moreover, this grant is limited to five satellites only, and no further grant-in-part will be considered for deployment of any future AST satellites with direct-to-cell capabilities before AST's request for such capabilities, and any associated lease arrangement(s) or agreements, have been accepted for filing by the Commission under the framework established in the Commission's *SCS R&O*.⁶⁰ Likewise, while we do not grant authority with respect to AST's service band operations, for the feeder link gateways and TT&C earth stations, AST must coordinate with the National Radio Quiet Zone (NRQZ) for all new or modified,

⁵⁴ See, e.g., ITU Radio Regulation No. 4.4.

⁵⁵ 47 CFR § 25.207; see *id.* at 12; ITU Radio Regulation No. 4.4.

⁵⁶ See ICFS File No. SAT-AMD-20240311-00053, Narrative at 7.

⁵⁷ We likewise defer consideration of AST's waiver requests specific to use of certain bands allocated to terrestrial services for SCS, which includes waiver requests of the U.S. Table of Frequency Allocations, 47 CFR § 2.106, and sections 25.156(d)(1), 25.157, 25.102(a) and 25.115(a)(1)(i) of the Commission's rules, 47 CFR §§ 25.156(d)(1), 25.157, 25.102(a), 25.115(a)(1)(i), as well as waiver requests of Parts 22 and 27 of the Commission's rules. See ICFS File No. SAT-AMD-20230717-00172, Exh. B at 1-5, 7-8.

⁵⁸ This portion of the application has not yet been accepted for filing and placed on public notice. *Satellite Licensing Division and Satellite Programs and Policy Division Information, Actions Taken*, Report No. SAT-01812 (Apr. 5, 2024) ("This application, as amended, is accepted for filing in part and the Satellite Programs and Policy Division does not at this time accept for filing AST's request to provide supplemental coverage from space, or otherwise operate in frequencies between 617 MHz and 2200.0 MHz except for the above-specified TT&C."). Until the deficiencies in ICFS File Nos. SAT-AMD-20230717-00172 and SAT-AMD-20240311-00053 are cured, we are not in a position to place the remainder of those applications on public notice. Further, the Commission will not authorize additional deployment authority for any satellites capable of operating on these frequency bands until an SCS application and any associated lease arrangement(s) or agreement have been placed on public notice.

⁵⁹ Should the Commission grant part or all of this request or any amendments thereto in the future, the Commission may adopt additional conditions beyond those specified in the *SCS R&O*.

⁶⁰ See *SCS R&O*, paras. 88-139; *infra* condition 27nn.

permanent, fixed, licensed transmitters inside the NRQZ.⁶¹ We note that this grant does not provide AST any reliance interest with respect to deployment of additional AST satellites with direct-to-cell capabilities or service link operations within the United States in the future.⁶² Any investment AST makes pursuant to this authorization is at its own risk.

16. *Optical Astronomy.* NRAO expresses concerns regarding the size of the AST satellites,⁶³ stating that AST's constellation would carry by far the majority of the light-reflecting surface area of all LEO satellites for the foreseeable future, with the potential to vastly magnify the burgeoning disturbance of the appearance of the night sky.⁶⁴ We also acknowledge various comments filed in the docket for the SCS proceeding expressing concerns over the size of AST's satellites and the impact of the brightness of AST's satellites on the night sky.⁶⁵

17. AST has specified its actions to mitigate any impact of its satellites on optical astronomy, which will include making available accurate satellite ephemeris data to astronomy stakeholders, incorporating deployable antenna elements that reduce brightness, and operationally rolling or tilting spacecraft to avoid direct illumination of optical telescopes.⁶⁶ Furthermore, AST has engaged in extensive coordination efforts with the U.S. National Science Foundation (NSF) to negotiate a draft Memorandum of Understanding (MOU) memorializing mutual coordination commitments in order to mitigate optical astronomy interference.⁶⁷ This grant includes specific conditions associated with that coordination. AST must make a good faith effort to demonstrate an optical brightness with an initial aim of 6th magnitude and progress toward 7th magnitude or fainter, report on this progress annually, choose lower orbital elevations when feasible, design its constellation to minimize the number of satellites necessary, provide orbital information to astronomy sites and astronomers, and continue to evaluate ways to mitigate impacts on optical astronomy interests.⁶⁸ AST must also file a copy of the MOU with the Commission. Based on the information reported in connection with these conditions, the license may be subject to additional terms and conditions. We similarly condition this grant on this continued coordination with NSF and compliance with any terms contained in the resulting coordination agreement.⁶⁹ AST must also file a copy of the agreement with the Commission prior to commencing operations. Under these circumstances, we conclude that the concerns raised have been addressed with respect to this limited grant authorizing deployment of five satellites only.

⁶¹ See 47 CFR § 1.924.

⁶² See Omnispace August 29 Ex Parte.

⁶³ See NRAO Comments at 5. NRAO also expresses concern about the effect of AST's requested operations in the 42-42.5 GHz band on radio astronomy. NRAO Comments at 2-4. However, as discussed above, AST no longer seeks to operate in the 4242.5 GHz band.

⁶⁴ See *id.* at 5.

⁶⁵ See ECFS Docket No. 23-65.

⁶⁶ See Letter from Timothy Bransford, Counsel, AST, to Marlene H. Dortch, Secretary, FCC (dated Jul. 24, 2024), Attach. 2 at 2.

⁶⁷ See *id.* at 1-2.

⁶⁸ See AST August 1 Letter at 3; see also *id.* (noting that the optical brightness of the Block 1 Bluebirds is estimated on average to be of a visual magnitude of approximately 5.83). AST shall address in this continued coordination with NSF the locations of earth stations to preferentially avoid key U.S. radio observatories, and AST is encouraged to minimize the impact on astronomical laser closure windows.

⁶⁹ See *id.* at 3. We also note that operations have been coordinated with Federal spectrum users. As a result, we have also included conditions that AST shall address, in continued coordination with NSF, the locations of earth stations to preferentially avoid key U.S. radio observatories, and AST is encouraged to minimize the impact on astronomical laser closure windows.

18. *Orbital Debris Mitigation.* We find that AST has provided an orbital debris mitigation plan in conformance with our rules. AST has submitted an updated debris mitigation plan which complies with the Commission's more recently adopted debris mitigation rule revisions and provides an estimate of the amount of fuel reserved for post-mission disposal maneuvers.⁷⁰ AST has also committed to 1) employing a launch and on-orbit conjunction analysis and mitigation process, and associated thresholds; and 2) working with National Aeronautics and Space Administration (NASA) and other users of space on orbital debris mitigation best practices.⁷¹

19. In connection with AST's earlier filings with the Commission, NASA and TechFreedom express concern that the size and orbital regime of the satellites heighten the collision danger for any failed AST spacecraft, creating a threat to considerable assets from resulting debris.⁷² NASA recommended that AST consider an orbit below NASA's A-Train Constellation.⁷³ NASA further suggested that AST works with the Commission to conduct a detailed analysis to identify and achieve the necessary propellant management device (PMD) reliability for the proposed constellation to mitigate potential negative effects from the constellation to the environment.⁷⁴ In connection with its updated debris mitigation plan that AST subsequently filed, we are persuaded that AST has addressed these concerns to the extent necessary to issue this limited grant. AST and NASA have signed a joint Space Act Agreement to improve flight safety and have begun collaborating since NASA submitted these comments.⁷⁵ NASA has since clarified that, while technical concerns still exist, this need not preclude the issuance of the requested license.⁷⁶ As a result, we concurrently find AST has satisfied instant concerns about the size of the satellites that were raised by NASA and echoed by TechFreedom.⁷⁷ We also note that the five satellites which are authorized in this Order will operate in the 515-525 kilometer altitude range, which is well below the altitude of the A-Train satellites about which NASA expresses concern.

20. To further reduce the possibility of debris generated by AST's satellites, we adopt two additional conditions suggested by NASA. First, we require AST to have a conjunction assessment (CA) and mitigation process of the same sophistication and risk aversion as the NASA satellites with which they will be collocated.⁷⁸ Second, we require AST to create a robust arrangement for direct contact and sharing of ephemerides and maneuver plans with NASA/USGS/partner during routine operations to

⁷⁰ ICFS File No. SAT-AMD-20240311-00053, Exh. B at 7; EchoStar Objection at 7; EchoStar Reply at 5.

⁷¹ See AST Consolidated Response at 13.

⁷² See Letter from Samantha Founder, Representative to the Commercial Space Transportation Interagency Group Human Exploration and Operations Mission Directorate, Launch Services Office, NASA, to Marlene H. Dortch, Secretary, FCC at 2 (dated Oct. 29, 2020) (NASA Letter); see also Letter from James E. Dunstan, General Counsel, TechFreedom, to Marlene H. Dortch, Secretary, FCC at 2 (dated Nov. 2, 2020) (TechFreedom Letter) ("TechFreedom shares the concerns expressed by NASA in its October 29, 2020, letter, filed in this docket...").

⁷³ See NASA Letter at 2.

⁷⁴ See *id.* at 4.

⁷⁵ See Letter from Samantha Founder, Representative to the Commercial Space Transportation Interagency Group Human Exploration and Operations Mission Directorate, Launch Services Office, National Aeronautics and Space Administration (NASA), to Marlene H. Dortch, Secretary, FCC at 1 (dated Nov. 17, 2020) (NASA Response); ICFS File No. SAT-AMD-20240311-00053, Exh. B at 4-6; Letter from Timothy Bransford, Counsel to AST, to Marlene H. Dortch, Secretary, FCC at 2 (dated Dec. 19, 2022).

⁷⁶ See NASA Response at 1.

⁷⁷ AST also explains that TechFreedom's assessment of the satellite size is incorrect because the satellite will fly on edge, and that the satellites will have a cross-section of about 3 meters squared rather than the 900 meters squared cross-section that TechFreedom claims. See AST Consolidated Response at 13-14; TechFreedom Letter at 2.

⁷⁸ See NASA Letter at 2.

prevent collisions and simultaneous maneuvers.⁷⁹

21. In addition, SpaceX argues that the Commission should impose, as conditions on any authorization granted to AST in this proceeding, the space sustainability requirements it recently determined were in the public interest when authorizing SpaceX's second-generation NGSO system.⁸⁰ Although we issue a limited grant of five satellites, given the size of the satellites and AST's plans to expand its constellations, we agree that such conditions remain an important means to mitigate orbital debris and adopt a similar set of conditions for AST. Such conditions will give the Commission the ability to monitor AST's operations continuously to address satellite reliability issues as they arise, with additional flexibilities to account for a system that is in the early stages of what is ultimately planned to be a larger-scale deployment. We also encourage AST to provide information and collaborate with the Commission in the event of even a single satellite disposal failure. Regarding the condition that includes the 100 object year metric, we find the facts for AST similar to those of Kuiper, another licensee whose system is more like SpaceX's first generation system in terms of being early in the deployment phase and to which the Space Bureau did not impose an object year metric, and we similarly do not adopt a 100 object year metric here.⁸¹

22. We do not find that TechFreedom has sufficiently demonstrated additional orbital debris concerns that would prohibit this grant.⁸² This grant is for a limited number of satellites, only five compared to the 243 to which TechFreedom objects.⁸³ Moreover, while TechFreedom requests that the Commission defer action on AST's application until we complete the proceeding and issue rules pursuant to the Further Notice of Proposed Rulemaking contained in the Commission's proceeding on *Mitigation of Orbital Debris in the New Space Age*,⁸⁴ there is nothing to prevent consideration of specific applications for satellite constellations during the pendency of the proceeding, and here we authorize deployment of five satellites only.⁸⁵

23. *Waiver Requests.* In connection with its request, AST seeks waivers of the various Commission rules. A waiver is appropriate only if both (1) special circumstances warrant a deviation

⁷⁹ See *id.*

⁸⁰ See Letter from David Goldman, Senior Director of Satellite Policy, to Marlene H. Dortch, Secretary, FCC (dated Jan. 17, 2023) (SpaceX January 17 Letter); 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 argues that the Commission should not rely on other agencies to raise orbital debris concerns, that small constellations can be create risk at certain altitudes, that satellites at higher altitudes can carry higher collision risk, that newer operators require more oversight, and that exempting operators from the Gen2 Order requirements perpetuates an uneven competitive playing field. See Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 2-4 (dated Mar. 31, 2023).

⁸¹ See *Kuiper Systems LLC Request for Modification of the Authorization for the Kuiper NGSO Satellite System*, Order Authorization, DA 24-224, para. 17 (Mar. 8, 2024).

⁸² TechFreedom expresses a few additional concerns about potential orbital debris generated by AST satellites due to their number and design by a start-up entity. See TechFreedom Letter at 2-4. TechFreedom also raised orbital debris concerns related to AST seeking a license through Papua New Guinea, an authority which TechFreedom posits does not have significant expertise in orbital debris analysis. See *id.* at 3-4. However, this argument is now moot given AST seeks a U.S. license.

⁸³ See *id.* at 1.

⁸⁴ *Space Innovation: Orbital Debris in the New Space Age*, IB Docket Nos. 22-271 and 18-313, Second Report and Order, FCC 22-74 (Sept. 30, 2022); Tech Freedom Letter at 4 (citing *Orbital Debris in the New Space Age*, IB Docket No. 18-313, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020)).

⁸⁵ See *Orbital Debris in the New Space Age*, 35 FCC Rcd at 4227-4250, paras. 154-205.

from the general rule, and (2) such deviation better serves the public interest.⁸⁶ Generally, the Commission may waive any rule if there is good cause to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis.⁸⁷ Here, we only address waivers related to the limited operations authorized herein and defer consideration of AST's remaining relevant waiver requests.⁸⁸

24. AST seeks waiver of section 25.156(d)(4) of the Commission's rules, which provides that the Commission will consider applications for authority to operate feeder links separately from applications to provide service.⁸⁹ We dismiss AST's request to waive section 25.156(d)(4) as unnecessary. Section 25.156(d)(4) does not prohibit consideration of applications with requesting both feeder link and service link operation, but was intended to expedite application processing in light of the updated modified processing round rules.⁹⁰ In any event, AST now requests that the Commission defer authority to operate on the requested service bands allocated to terrestrial services for SCS and in the interim only requests authority to operate feeder links, in addition to TT&C operations, and we accordingly only issue authority for feeder link and not service link operations.⁹¹

25. In addition, AST argues that its most recent amendment should not be considered "major" because none of the changes in the instant application increase the potential for interference or otherwise implicate the elements of section 25.116(b) of the Commission's rules.⁹² However, to the extent the Commission considers this a major amendment that does not fall within the exception, AST requests waiver of section 25.116(c) of the Commission's rules and argues that the amendment does not create increased interference risk as demonstrated in the updated technical annex and interference analysis.⁹³ In its most recent amendment, AST requests to operate five additional satellites at a lower altitude and added requests to operate in the S-band and UHF band for TT&C during LEOP and emergency TT&C.⁹⁴ Although submitting these additional requests could be considered a "major"

⁸⁶ *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)).

⁸⁷ 47 CFR § 1.3. 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.").

⁸⁸ AST also requested waivers of section 25.112(a)(3) of the Commission's rules, which provided that the Commission will dismiss applications that request authority to operate space stations in bands not allocated internationally for the requested operations under the ITU Radio Regulations, and relatedly of section 25.112(b) of the Commission's rules, which formerly cited to section 25.112(a)(3). See ICFS File No. SAT-AMD-20240311-00053, Narrative at 14; ICFS File No. SAT-AMD-20230717-00172, Exh. B at 6-7. However, section 25.112(a)(3) has since been removed from the Commission's rules, and these waiver requests are thus dismissed as moot. See *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation*, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-73, para. 27 (Sept. 21, 2023).

⁸⁹ 47 CFR § 25.156(d)(4).

⁹⁰ See *id.*; *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10811-10812, para. 127 (2003).

⁹¹ See ICFS File No. SAT-AMD-20240311-00053, Narrative at 7.

⁹² 47 CFR § 25.116(b); see ICFS File No. SAT-AMD-20240311-00053, Narrative at 13.

⁹³ See ICFS File No. SAT-AMD-20240311-00053, Narrative at 12-13.

⁹⁴ See *id.* at iii-iv.

amendment under our rules,⁹⁵ these requests do not create the potential for new or increased frequency conflicts, and AST does not seek to make any changes to its previously requested V-band operations.⁹⁶ Also, no other processing round participants commented or expressed concern on AST's request for an additional five satellites or TT&C frequencies. We accordingly find that it would not serve the public interest to demote the status of AST's timely filed V-band application and dismiss AST's request for waiver as unnecessary.

26. *Lack of Deficiencies in Application.* In issuing this grant in part of AST's application, we find that AST's application is complete and consistent for the operations covered by the grant. T-Mobile argued that aspects of AST's Form 312 and Schedule S were incomplete.⁹⁷ However, since AST filed its most recent amendment, which includes an updated Form 312 and Schedule S,⁹⁸ T-Mobile has not commented further on the completeness of AST's application. Thus, we consider T-Mobile's concerns moot.

IV. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that the application filed by AST&Science LLC is GRANTED IN PART AND DEFERRED IN PART, with conditions, as set forth in this Order, pursuant to section 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(a). AST&Science LLC is AUTHORIZED to operate up to five non-geostationary orbit satellites in accordance with the technical specifications set forth in its application and in compliance with the Commission's rules, unless waived herein, and subject to the following conditions:

- a. AST is authorized to operate in the following bands: 37.5-42.0 GHz (center frequency of 38.75 GHz with bandwidth of 2.5 GHz; center frequency of 39.75 GHz with bandwidths of 0.5 GHz and 4.5 GHz; center frequency of 40.25 GHz with bandwidth of 0.5 GHz, center frequency of 41.0 GHz with bandwidth of 2.0 GHz) (space-to-Earth), 47.2-50.2 GHz (center frequency of 48.7 GHz with bandwidth of 3.0 GHz) (Earth-to-space), 50.4-51.4 GHz (center frequency of 50.9 GHz with bandwidth of 1.0 GHz) (Earth-to-space), 2025-2110 MHz (center frequencies of 2047.0 MHz, 2057.0 MHz, and 2077.0 MHz, each with bandwidths of 192 kHz) (Earth-to-space), 2200-2290 MHz (center frequencies of 2225 MHz and 2235 MHz, each with bandwidths of 768 kHz) (space-to-Earth), and 430-440 MHz (center frequencies of 430.5 MHz, 432.3 MHz, 434.1 MHz, 435.9 MHz, and 439.5 MHz, each with bandwidths of 50 kHz) (space-to-Earth and Earth-to-space).⁹⁹
- b. AST's request to conduct SCS or direct-to-cell operations in the 617.0-960.0 MHz or 1805.0 MHz-2200.0 MHz bands IS DEFERRED, and AST may not transmit or receive in those bands, other than to perform the TT&C operations in the 2025-2110 MHz band granted herein with earth stations outside of the United States. With respect to any request to conduct SCS, AST shall file all required information as outlined in the SCS R&O and any additional information requested by the Commission.
- c. AST must prepare the necessary information, as may be required, for submission to the ITU to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio

⁹⁵ 47 CFR § 25.116(b)(1).

⁹⁶ 47 CFR § 25.116(c)(1).

⁹⁷ See T-Mobile Petition at 9-10; see also EchoStar Reply at 3.

⁹⁸ See ICFS File No. SAT-AMD-20240311-00053.

⁹⁹ These center frequencies and bandwidths are the result of coordination with Federal operators. With respect to those frequency bands shared with Federal spectrum users, Federal operators have indicated that Federal missions brought into use after issuance of this grant may prevent future modification or renewal.

Regulations. AST shall be held responsible for all cost-recovery fees associated with the 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. *See* 47 CFR § 25.111(b).

- d. In connection with the provision of service in any particular country, AST is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.
- e. AST shall be aware that space-to-Earth and Earth-to-space operations shall be strictly limited to durations when the AST space stations referenced within this license request are visible to the corresponding earth station locations listed in Appendix A of this grant, noting any additional restrictions within this grant.
- f. Transmissions in the 430-440 MHz, 2025-2110 MHz, and 2200-2290 MHz frequency bands may only be made using specific frequencies and earth stations coordinated with NASA, the Air Force Spectrum Management Office (AFSMO), Department of Commerce (DOC)/National Oceanic and Atmospheric Administration (NOAA), and the Department of the Navy (DON). Any use of Federal or government-sponsored ground stations shall be coordinated by AST's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov), and DOC (edna.prado@noaa.gov). A list of coordinated non-Federal earth stations is attached as Appendix A.¹⁰⁰ AST SpaceMobile shall successfully coordinate any changes to the list of Federal or non-Federal earth stations, which must be located outside the United States, prior to requesting license modification to add these station locations.
- g. AST may only conduct backup TT&C operations in the 2025-2110 MHz band using the center frequencies and bandwidths coordinated with Federal users set forth in condition 27a of this grant and only during LEOP and emergency (non-earth pointing) situations. AST shall notify NASA (HQ-SatCoord@mail.nasa.gov) and AFSMO (jimmy.nguyen@us.af.mil) within 5 days after completion of LEOP and within 5 days after any emergency event requiring use of this band for emergency operations. AST's operations pursuant to this authorization under the International Table of Frequency Allocations must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a).
- h. In the 2025-2110 MHz band (Earth-to-space), AST shall cease uplink transmissions (which are limited to TT&C during LEOP and for emergency TT&C in the 2025-2110 MHz (Earth-to-space) band with specified earth stations outside the United States) centered at 2057 MHz with 192 kHz bandwidth when the NASA OSAM-1 satellite (also known as RESTORE-L) is within radio line of sight (RLOS) to AST earth stations identified in Appendix A. This condition shall be applied after OSAM-1 is brought into use.
- i. In the 2025-2110 MHz band (Earth-to-space), AST shall cease uplink transmissions (which are limited to TT&C during LEOP and for emergency TT&C in the 2025-2110 MHz (Earth-to-space) band with specified earth stations outside the United States)

¹⁰⁰ ICFS File No. SAT-AMD-20240311-00053, Tech Annex at 10.

centered at 2077 MHz during NASA's Artemis missions, beginning with Artemis IV, from Launch to Launch + 24 hours.

- j. AST may only conduct backup TT&C operations in the 2200-2290 MHz band using the center frequencies and bandwidth coordinated with Federal users set forth in condition 27a of this grant and only during LEOP and emergency (non-earth pointing) situations. AST shall notify NASA (HQ-SatCoord@mail.nasa.gov) and AFSMO (jimmy.nguyen@us.af.mil) within 5 days after completion of LEOP and within 5 days after any emergency event requiring use of this band for emergency operations. AST is required to successfully coordinate with NTIA prior to any operations in the 2200-2290 MHz frequency band. No operations in the 2200-2290 MHz frequency band are permitted with earth stations in the United States and Possessions (US&P). AST is required to successfully coordinate with NTIA prior to submitting any ITU filing involving any ground stations outside of the 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 AST for access to the 2200-2290 MHz band for earth stations located outside of the US&P on a case-by-case coordinated basis with appropriate EMC analysis to NTIA (ravery@ntia.gov), AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov), and DOC (edna.prado@noaa.gov) to ensure compatibility of operations with the Federal government.
- k. In the 2200-2290 MHz band (space-to-Earth), AST shall cease downlink transmissions from any of its satellites:
 - i. For the center frequency of 2225 MHz with 768 kHz bandwidth, when both an AST satellite and either of the two NASA TRACERS satellites is within radio line of sight (RLOS) to the TRACERS's earth stations located at Santiago, Chile; Dongara, Australia; South Point, HI; Punta Arenas, Chile; North Pole, AK; Kiruna, Sweden. This condition shall be applied after TRACERS is brought into use.
 - ii. For the center frequency at 2235 MHz during NASA's Artemis missions, beginning with Artemis IV, from Launch to Launch + 48 hours.
- l. PFD levels from operation in the 2200-2290 MHz band must not exceed the limits in Table 21-4 of the ITU Radio Regulations and must meet the limits/protection criteria in Recommendation ITU-R SA.1157-1 and Recommendation ITU-R SA.609-2.
- m. AST may only conduct backup TT&C operations in the 430-440 MHz band using the center frequencies and bandwidths coordinated with Federal users set forth in condition 27a of this grant and only during LEOP and emergency (non-earth pointing) situations. AST shall notify NASA (HQ-SatCoord@mail.nasa.gov) within 5 days after completion of LEOP and within 5 days after any emergency event requiring use of this band for emergency operations. When operating in the 430-440 MHz band, AST shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the ITU Radio Regulations.¹⁰¹
- n. To accommodate Federal use of the 430-440 MHz, 2025-2110 MHz, and/or 2200-2290 MHz bands for future Federal missions, AST agrees to implement further restrictions to

¹⁰¹ See ITU Radio Regulation No. 4.4.

the authorized center frequencies and bandwidths identified in this grant upon notification from one or more of the Federal agencies (including potential operational duty cycle limitations). AST shall notify the FCC of further restrictions imposed by a Federal agency within 10 days of notification and shall operationally implement the restriction within 30 days.

- o. AST operations in V-band frequencies shall not cause interference to, and shall not claim protection from, geostationary orbit (GSO) networks operating in the FSS and Broadcasting-Satellite Service (BSS) in accordance with section 25.289 of the Commission's rules, 47 CFR § 25.289. In the event that relevant EPFD limits or procedures related to sharing between GSO and NGSO networks are adopted by the Commission or the ITU, operations must be in conformance with such limits and procedures.
- p. Operations in the 37.5-40.0 GHz band must comply with the PFD limits in section 25.208(r).
- q. Operations in the 37.5-38.0 GHz and 40.0-40.5 GHz bands must be successfully coordinated with Federal Space Research Service (SRS) facilities, pursuant to Recommendation ITU-R SA.1396, "Protection Criteria for the Space Research Service in the 37-38 GHz and 40.0-40.5 GHz Bands."
- r. Operations in the 37.5-42 GHz band (space-to-Earth) must not cause unacceptable interference to, or claim protection from, a GSO FSS or BSS network. These operations must comply with ITU Radio Regulations 22.5L and 22.5M.
- s. Operations in the 40-42 GHz band are authorized up to the PFD limits in 47 CFR § 25.208(s) and (t).
- t. In accordance with footnote US211 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), (c)(211), AST is urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference from its operations in the 40.5-42.0 GHz band (*see* ITU-R Recommendation RA.1513-2 and ITU-R RA.769-2).
- u. In accordance with Footnote 5.550CA of the Radio Regulations, all space-to-Earth transmissions at angles greater than 65.0° from nadir relative to each AST satellite shall not exceed an unwanted emission EIRP density of -21 dB(W/100 MHz) in the 36-37 GHz band.
- v. Space stations receiving in the 47.2-48.2 GHz and the 50.4-51.4 GHz band may not claim interference protection from the fixed and mobile services.
- w. Operations in the 50.4-51.4 GHz band are subject to rules that may be adopted in the Spectrum Frontiers Proceeding, GN Docket 14-177.
- x. Operations in the 47.2-50.2 GHz and 50.4-51.4 GHz bands (Earth-to-space) must not cause unacceptable interference to, or claim protection from, a GSO FSS or BSS network. These operations must comply with ITU Radio Regulations 22.5L and 22.5M.
- y. In accordance with footnote US342 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), (c)(342), AST is urged to take all practicable steps to protect radio astronomy observations from harmful interference from its operations in the 48.94-49.04 GHz band. In addition, any future grant of earth station licenses for operations with the AST system will be subject to the following condition: in the 48.94-49.04 GHz band, operations must be coordinated with radio astronomy stations operating on a co-primary basis in this

band.

- z. In accordance with Resolution 750 of the Radio Regulations, and with footnote US156, all Earth-to-space transmissions shall not exceed an unwanted emission power, as measured at the antenna port, of -42 dBW in the frequency band 50.2-50.4 GHz. For earth stations that employ uplink power control (free-space path loss compensation), the unwanted emission power shall be limited to -42 dBW at zenith and may increase to a maximum level of -35 dBW at a minimum elevation angle of 15° . Prior to launch, AST shall provide measured spectrum plots to NASA (HQ-SatCoord@mail.nasa.gov) to ensure conformance with unwanted emission limits.
- aa. AST must coordinate with NSF prior to commencing operations to ensure a mutually acceptable agreement to mitigate the impact of its satellites on ground-based radio, optical and infrared astronomy sites.¹⁰² This coordination shall include locations of earth stations to preferentially avoid key U.S. radio observatories, and AST is encouraged to minimize the impact on astronomical laser closure windows (NSF ESM office: esm@nsf.gov).
- bb. For any feeder link gateways or TT&C earth stations, NRQZ coordination is required for all new or modified, permanent, fixed, licensed transmitters inside the NRQZ, as specified for non-federal transmitters in 47 CFR § 1.924.
- cc. AST must coordinate in good faith the use of commonly authorized frequencies with all authorized NGSO FSS grantees.
- dd. Operations must comply with the spectrum sharing procedures among NGSO FSS space stations specified in 47 CFR § 25.261(c) with respect to any NGSO system licensed or granted U.S. market access pursuant to the 2021 V-band processing round initiated in Public Notice, DA 21-941, 36 FCC Rcd 12148 (IB 2021).
- ee. Prior to commencing operations, AST must either certify that it has completed a coordination agreement with any operational NGSO FSS system licensed or granted U.S. market access pursuant to the 2016 V-band processing round initiated in Public Notice, DA 16-1244, 31 FCC Rcd 11957 (IB 2016), or submit for Commission approval a compatibility showing which demonstrates by use of a degraded throughput methodology that it will not cause harmful interference to any such system with which coordination has not been completed. If an earlier-round system becomes operational after AST has commenced operations, AST must submit a certification of coordination or a compatibility showing with respect to the earlier-round system no later than 60 days after the earlier-round system commences operations. AST may commence operations at its own risk, on a non-interference, unprotected basis with respect to any operations authorized pursuant to the 2016 V-band processing round for which coordination has not been completed, prior to the approval of its showing by the Commission. Protection of the earlier round systems by AST will sunset pursuant to section 25.261(e).
- ff. AST must comply with the sharing of ephemeris data procedures described in section 25.146 of the Commission's rules, 47 CFR § 25.146(e).
- gg. AST 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.
- hh. AST's operations must comply with the emission limitations set forth in section 25.202(f)

¹⁰² See *infra* condition 33.

- of the Commission's rules.
- ii. Prior to commencing operations with the space stations authorized herein, AST must file with the Commission the information required by section 25.172 of the Commission's rules, 47 CFR § 25.172.
 - jj. AST shall notify the Commission, and other federal agencies, the initial orbital parameters (e.g., operating altitudes, inclination angle) for each satellite within 30 days following deployment. Notification shall be provided to AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov), and DOC/NOAA (edna.prado@noaa.gov).
 - kk. Unless extended by the Commission for good cause shown, this authorization will become null and void in the event the AST 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:
 - i. AST must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than **September 1, 2024**, 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
 - ii. AST must launch 50 percent of the maximum number of proposed space stations, place them in the assigned orbits, and operate them in accordance with this grant no later than **August 2, 2030** and must launch the remaining 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 2, 2033**. 47 CFR § 25.164(b).
 - iii. 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 AST'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 AST's surety bond. By **August 17, 2030**, AST 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).
 - ll. The license term for the constellation is 15 years and will begin on 3 a.m. EST on the date that AST certifies to the Commission that its initial space station has been successfully placed into orbit and its operations fully conform to the terms and conditions of this authorization. AST must file such certification within five business days of placing its initial satellite into operation
 - mm. AST satellites must operate consistent with all technical specifications provided to the Commission. Should AST wish to alter any other technical specifications, including but not limited to any information presented in its orbital debris mitigation plan for the AST system, it must apply for further license modification from the Commission.
 - nn. Any action taken or expense incurred as a result of operations pursuant to this grant is solely at AST's own risk. This grant is limited to five satellites only, and no further grant-in-part will be considered for deployment of any future AST satellites capable of operating in the 617-960 MHz or 1805 MHz-2200 MHz bands before AST's request for such operations, and any associated lease arrangement(s) or agreement(s) have been accepted for filing by the Commission under the framework established in the

Commission's *SCS R&O*.¹⁰³

- oo. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, in making any investments relating to operations authorized in this Order, AST assumes the risk that it may be subject to additional conditions or requirements as a result of any future Commission actions. This includes, but is not limited to, any conditions or requirements resulting from any action in the proceedings associated with IB Docket 22-271 and GN Docket 23-65,¹⁰⁴ IB Docket 18-313,¹⁰⁵ and IB docket 21-456.¹⁰⁶
- pp. This grant is without prejudice to any future action taken in connection with any other pending requests before the Commission by AST, including but not limited to requests included within ICFS File Nos. SAT-AMD-20230717-00172 and SAT-AMD-20240311-00053.
- qq. This grant-in-part is without prejudice to any action on the remainder of the requests in AST's application, including with respect to the issues raised in the record of this proceeding not otherwise addressed herein.

28. IT IS FURTHER ORDERED that this grant is subject to modification to bring the AST space stations into conformance with any rules or policies adopted by the Commission in the future.

29. AST 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 information:

- a. The number of conjunction events identified for AST 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. Satellites that, for purposes of disposal, were removed from operation or screened from further deployment at any time following initial deployment, and identifying whether this occurred less than five years after the satellite began regular operations or were available for use as an on-orbit replacement satellite,
- c. Satellites that re-entered the atmosphere,
- d. Satellites for which there was a disposal failure, i.e. a satellite that loses the capability to maneuver effectively, including a discussion of any assessed cause of the failure and remedial actions, and

¹⁰³ See *SCS R&O*, paras. 88-139.

¹⁰⁴ See generally *Single Network Future: Supplemental Coverage from Space, Space Innovation*, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-28 (Mar. 14, 2024); *Single Network Future: Supplemental Coverage from Space, Space Innovation*, Notice of Proposed Rulemaking, FCC 23-22 (Mar. 17, 2023).

¹⁰⁵ See generally *Space Innovation Mitigation of Orbital Debris in the New Space Age*, Report and Order, 37 FCC Rcd 11818 (2022); *Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020).

¹⁰⁶ See generally *Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems*, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-29 (Apr. 21, 2023); *Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems; Revision of Section 25.261 of the Commission's Rules to Increase Certainty in Spectrum Sharing Obligations Among NGO FSS Systems*, Order and Notice of Proposed Rulemaking, 36 FCC Rcd 17871 (2021).

- e. Identification of any collision avoidance system outages or unavailability, either on a system-wide basis or for individual satellites. An “outage” would include any individual satellite anomaly that results in a satellite not achieving targeted risk mitigation via maneuver.

30. AST must also provide a report if during any continuous one-year period there are two or more satellite disposal failures. Such report shall be filed not later than 10 days following the second disposal failure and must either state the assessed cause of the failure and remedial actions for each of the disposal failures during the period, if available, or provide a schedule for completion of a process for doing so. 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.

Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, AST 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; modifying spacecraft attitude and/or operations. AST must communicate and collaborate with NASA to ensure that deployment and operation of its satellites does not unduly constrain deployment and operation of NASA assets and missions, supports safety of both AST and NASA assets and missions, and preserves long-term sustainable space-based communications services. AST must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 29 of this grant.

AST must have a collision avoidance and mitigation process of the same sophistication and risk aversion as any NASA satellites with which AST’s satellites would be collocated. AST must create a robust arrangement for direct contact and sharing of ephemerides and maneuver plans with NASA or USGS partners during routine operations to prevent collisions and simultaneous maneuvers.

31. AST must continue to coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA’s science missions involving astronomy.

32. AST must monitor its satellites’ propellant reserves to ensure that the AST satellites are able to fully perform collision avoidance maneuvers during operations at the relevant altitudes specified in its application as well as complete maneuvers to lower the apogee to below any inhabitable space stations. Should an AST satellite engage in more maneuvers than originally projected or otherwise consume propellant more rapidly than anticipated, AST must initiate deorbit operations early in order to ensure that sufficient propellant remains to complete deorbit maneuvers. AST must make available to other operators supplemental information, based on GPS readings or other supplemental sources, such as third-party observations, sufficient to reduce covariance of predicted trajectories to a level that facilitates collision avoidance procedures, as coordinated with other operators.

33. AST must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy and comply with any terms contained therein. A copy of such agreement must be filed with the Commission before AST commences operations.¹⁰⁷ AST must submit an annual report to the Commission, by January 1st each year covering the preceding year containing the following information: (1) whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps AST has taken to reduce the impact of its satellites on optical astronomy, including but not limited to darkening, deflecting light away from the Earth, attitude maneuvering, and provision of orbital information to astronomers for scheduling

¹⁰⁷ See *supra* condition 27aa.

observations around satellites' locations.

In coordinating operations with NSF, AST must make a good faith effort to adopt or work towards the following recommendations: 1) demonstrate via modeling and sky measurements an optical brightness with an initial aim of 6th magnitude and a goal of 7th magnitude or fainter, 2) report on progress annually to the Commission, 3) choose orbital elevations of ~700 km or lower when feasible and design its constellation to minimize the number of satellites necessary to provide service, and 4) provide real-time high-fidelity orbital information for dissemination to astronomy sites and astronomers developing scheduling algorithms.

34. IT IS FURTHER ORDERED that the request of AST for a waiver of the Commission's processing round rules IS DISMISSED AS MOOT regarding the 37.5-42.0 GHz (space-to-Earth), 47.2-50.2 GHz (Earth-to-space), and 50.4-51.4 GHz (Earth-to-space) frequency bands.

35. IT IS FURTHER ORDERED that the request of AST for a waiver of the Commission's mutual exclusivity rule IS DISMISSED AS MOOT regarding the 37.5-42.0 GHz (space-to-Earth), 47.2-50.2 GHz (Earth-to-space), and 50.4-51.4 GHz (Earth-to-space) frequency bands.

36. IT IS FURTHER ORDERED that the request of AST for a waiver of section 25.156(d)(4), which requires consideration of applications for feeder link and service band authority to be made separately, IS DISMISSED.

37. IT IS FURTHER ORDERED that the request of AST for waivers of sections 25.112(a)(3) and 25.112(b), which provided that we dismiss applications that request authority to operate space stations in bands not allocated internationally for the requested operations, IS DISMISSED AS MOOT.

38. IT IS FURTHER ORDERED that the request of AST for a waiver of section 25.116(c), which requires that an NGSO-like satellite license be considered to be a newly filed application if it is amended by a major amendment after a "cut-off" date applicable to the application, IS DISMISSED.

39. IT IS FURTHER ORDERED that the request of AST for a waiver of the U.S. Table of Frequency Allocations, section 2.106, for operations in the 617-960 MHz and 1805 MHz-2200 MHz bands IS DEFERRED.

40. IT IS FURTHER ORDERED that the request of AST for a waiver of sections 25.102(a) and 25.115(a)(1)(i) regarding blanket earth station licensing IS DEFERRED.

41. IT IS FURTHER ORDERED that the request of AST for a waiver of the Commission's processing round rules IS DEFERRED regarding the 617-960 MHz and 1805 MHz-2200 MHz bands.

42. IT IS FURTHER ORDERED that the Petitions to Deny filed by CTIA, T-Mobile, and Verizon ARE DENIED IN PART AND DEFERRED IN PART.

43. IT IS FURTHER ORDERED that AST is afforded 30 days from the date of release of this Order to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

44. IT IS FURTHER ORDERED that this Order is issued pursuant to 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, 47 CFR §§ 1.106 and 1.115, may be filed within 30 days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kerry E. Murray
Deputy Chief and Chief of Staff
Space Bureau

APPENDIX A**Earth Station Locations¹⁰⁸
Coordinated with Federal Agencies****S-band: 2025-2110 MHz (Earth-to-space) and 2200-2290 (space-to-Earth)**

1. Punta Arenas, Chile
2. Awarua, New Zealand
3. Hartebeesthoek, South Africa
4. Puertollano, Spain
5. Mingenew, Australia
6. Jeju, South Korea
7. Port Louis, Mauritius
8. Vimercate, Italy
9. Santa Maria, Azores, Portugal
10. Shetland, UK
11. Peterborough – Australia
12. Nangetty – Australia¹⁰⁹
13. Kandy, Sri Lanka
14. Absheron, Azerbaijan
15. Plana, Bulgaria
16. Blönduós, Iceland
17. Wilde, Argentina
18. Perth, Australia
19. Vinogradets, Bulgaria
20. Knoll Fort, St. Helena
21. Juju, South Korea

Q-band: 37.5-42.0 GHz (space-to-Earth); V-band: 47.2-50.2 GHz and 50.4-51.4 GHz (Earth-to-space)

1. Catawissa, PA
2. Midland, TX
3. Brewster, WA
4. Kapolei, HI
5. Thomaston, GA

UHF band: 430-440 MHz (Earth-to-space) (space-to-Earth)

1. Wilde, Argentina
2. Perth, Australia
3. Vinogradets, Bulgaria
4. Knoll Fort, St. Helena
5. Juju, South Korea

¹⁰⁸ See ICFS File No. SAT-AMD-20240311-00053, Tech Annex at 10. This list of earth stations is the result of coordination with Federal operators.

¹⁰⁹ We encourage AST to coordinate with the Commonwealth Scientific and Industrial Research Organisation in Australia prior to commencing operations with Australian earth stations.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7132960
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: August 1, 2024**Released: August 2, 2024**

By the Deputy 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 grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7132960 (Jul. 2, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon to Clear Rate without their authorization.⁹ Complainant stated that "a few months ago we received a call from Clear Rate Business . . . stating that Verizon had contracted their company to assume our business as Verizon was no longer going to provide services but that this would be OK because we would be saving money. I asked to speak with a manager to confirm the facts and both my Controller and I did so."¹⁰ Complainant explained that his company has been a customer of Verizon and its predecessor companies for more than 45 years.¹¹ After receiving bills from both Clear Rate and Verizon, Complainant called Verizon and described the experience and was told that his company "had been slammed."¹² According to Complainant, had he understood "that [Clear Rate] had no relationship to Verizon their offer would have been viewed differently and we would not have done business with this enterprise."¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹⁴ Clear Rate responded, stating that while initial confusion during sales calls is understandable, the completion of TPV and Quality Assurance calls, along with email engagement, suggests that complainant had ample opportunity to clarify any misunderstandings.¹⁵ According to Clear Rate, the quality assurance call was to ensure that Complainant was fully aware of the changes being made to their telephone service. Clear Rate believes that the quality assurance call is important for customer satisfaction. Clear Rate also provided the Commission with two audio recordings—the TPV recording and a recording Clear Rate characterized as a quality assurance call. Clear Rate did not address Complainant's misrepresentation claim and did not provide the recorded sales call or any other evidence related to the sales call.¹⁶

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization

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. 7132960.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁵ See Clear Rate Response to Informal Complaint No. 7132960 (Jul. 22, 2024); *see also* 47 CFR § 64.1160.

¹⁶ *Id.*

to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, “[w]hen a consumer’s decision to switch carriers is predicated on false information provided in a sales call, that consumer’s authorization to switch carriers can no longer be considered binding.”¹⁷ We therefore find that Clear Rate’s actions resulted in an unauthorized change in Complainant’s telecommunications service provider, as defined by the rules, and we discuss Clear Rate’s liability below.¹⁸

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission’s liability rules.¹⁹ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant’s authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.²⁰ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.²¹

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission’s rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission’s rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 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
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

¹⁷ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier’s TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁸ 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.

¹⁹ *See id.* § 64.1160(b).

²⁰ *See id.* § 64.1160(d).

²¹ *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7109063
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: August 1, 2024

Released: August 2, 2024

By the Deputy 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 grant the complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7109063 (Jun. 20, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon to Clear Rate without authorization.⁹ Complainant got a phone call from someone he thought was a Verizon customer service representative, offering to bundle his Verizon services.¹⁰ He stated that Clear Rate was the company that he was switched to, but the customer service representative made it seem like they were representing Verizon.¹¹ On June 6, Complainant got a Verizon bill and paid it, then he got a bill from Clear Rate Communications, higher than his Verizon bill.¹² Complainant did not think he was switching companies from Verizon to Clear Rate and believes he was slammed.¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹⁴ Clear Rate assurance call to ensure that all phone-related services, including local, long-distance, and international, are clearly explained as being transferred to Clear Rate. Clear Rate contended that by their agreement, customers confirm their understanding and consent to the changes being made.¹⁵ Clear Rate also provided two audio recordings—the TPV recording and a quality assurance call. Clear Rate did not address Complainant's misrepresentation claim in the response and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁶ We therefore find

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. 7109063.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁵ See Clear Rate Response to Informal Complaint No. 7109063 (Jun. 24, 2024).

¹⁶ *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

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.¹⁷

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁸ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 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.¹⁹ 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.²⁰

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 30 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
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁷ 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.

¹⁸ *See id.* § 64.1160(b).

¹⁹ *See id.* § 64.1160(d).

²⁰ *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7093459
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: August 1, 2024**Released: August 2, 2024**

By the Deputy 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 grant the complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7093459 (Jun. 12, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from AT&T to Clear Rate without authorization.⁹ Complainant stated that "[s]omeone from Clear Rate Communications called saying [AT&T] was no longer offered in my area and they were [taking] over. I didn't consent to anything during the call."¹⁰ The Complainant explained: "I called the number back to let them know I spoke with [AT&T] and that wasn't true[,] as I expected. The guy was rude and told me okay [and] nothing would change."¹¹ However, Complainant discovered that a few days later his "phone was off and number had been ported."¹² He explained: "I called numerous times but always got the same rude guy[,] which was strange. Clear Rate Communication took my number without my consent."¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹⁴ Clear Rate responded, stating that when customers agree to the sales, TPV, and quality assurance call, Clear Rate assumes they understand that a change in carrier is occurring.¹⁵ Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁶ We therefore find

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. 7093459.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁵ See Clear Rate Response to Informal Complaint No. 7093459 (Jun. 20, 2024).

¹⁶ *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

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.¹⁷

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁸ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 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.¹⁹ 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.²⁰

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 30 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
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁷ 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.

¹⁸ *See id.* § 64.1160(b).

¹⁹ *See id.* § 64.1160(d).

²⁰ *See id.* §§ 64.1140, 64.1160.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-760

Released: August 5, 2024

**WIRELINE COMPETITION BUREAU AND OFFICE OF ECONOMICS AND
ANALYTICS MAKE FINAL 2024 INCARCERATED PEOPLE'S COMMUNICATIONS
SERVICES DATABASE AVAILABLE TO ELIGIBLE INDIVIDUALS
PURSUANT TO PROTECTIVE ORDER**

WC Docket Nos. 23-62, 12-375

By this Public Notice, the Wireline Competition Bureau (Bureau) and the Office of Economics and Analytics (OEA) announce the availability, under the terms of the *2023 IPCS Protective Order*,¹ of the final Incarcerated People's Communications Services (IPCS) Database (2024 IPCS Database). The Commission used the 2024 IPCS Database in developing the new rate caps and other reforms adopted in the recent *2024 IPCS Order*² implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022.³

The 2024 IPCS Database contains two datasets, each of which includes IPCS providers' confidential information, such as cost and revenue information submitted in response to the Commission's 2023 Mandatory Data Collection.⁴ One dataset contains the data used to derive the upper bounds of the zones of reasonableness; the other dataset contains the data used to derive the lower bounds of the zones of reasonableness.⁵ The 2024 IPCS Database also includes geocoding information on facility locations added by the Commission staff to facilitate outside parties' review of the data submissions. Making this database available at this time will allow interested parties whose counsel and outside consultants comply with the terms of the *2023 IPCS Protective Order* to rely on a common dataset in

¹ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Protective Order, DA 23-298 (WCB Apr. 5, 2023) (*2023 IPCS Protective Order*).

² *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (July 22, 2024) (*2024 IPCS Order*).

³ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156.

⁴ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order, DA 23-638 (WCB July 26, 2023) (adopting instructions, a reporting template, and a certification form for the 2023 IPCS Mandatory Data Collection). This information was initially due on October 31, 2023 and was supplemented or revised by providers through March 5, 2024. Twenty-one providers submitted responses to the 2023 Mandatory Data Collection. The 2024 IPCS Database consolidates data from twelve of these responses into two sets of spreadsheets and provides the original or first revised versions from the other nine providers.

⁵ For completeness, the available data also includes the 2023 Mandatory Data Collection submissions received from those providers who were excluded from the database.

evaluating the reforms that the Commission adopted in the *2024 IPCS Order*, while ensuring providers remain protected against the unwarranted disclosure of their confidential information.

To request access to the 2024 IPCS Database, interested individuals must first satisfy the requirements of the *2023 IPCS Protective Order*. Under the terms of that Order, access to information submitted under a claim of confidentiality is limited to counsel and outside consultants who are not involved in competitive decision-making, who have executed either the Acknowledgement of Confidentiality appended to the *2023 IPCS Protective Order* or previously executed the Acknowledgement of Confidentiality appended to the *2013 ICS Protective Order*,⁶ and who meet the other requirements of those two protective orders.⁷ Individuals who qualify thereunder should contact the Bureau's staff, as set forth below. Before making the database available, Bureau staff will require each qualified person seeking access to execute a separate Recipient Acknowledgment, attached hereto as Appendix A, governing use of the 2024 IPCS Database.⁸ As detailed more fully in the Recipient Acknowledgment, recipients are obligated to ensure that their copies of the database are not duplicated (whether in full or in part) and that the confidential information in the database is not disclosed except as specifically permitted by the *2023 IPCS Protective Order*. Any other use of any confidential information contained in the 2024 IPCS Database will constitute a violation of an order of the Commission.⁹

Additional Information. For further information and to request access to the database, please contact Stephen Meil, Pricing Policy Division, Wireline Competition Bureau, at 202-418-7233 or via e-mail at Stephen.Meil@fcc.gov.

- FCC -

⁶ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954, 16960, Appx. A (WCB 2013) (*2013 ICS Protective Order*). The *2023 IPCS Protective Order* stated that individuals that had previously obtained access to confidential information pursuant to the *2013 Protective Order* did not need to resubmit executed Acknowledgments of Confidentiality. Instead, those prior Acknowledgements of Confidentiality were incorporated by reference into WC Docket No. 23-62. *2023 IPCS Protective Order* at 3-4, para. 6.

⁷ *2023 IPCS Protective Order* at Appx. A; *2013 ICS Protective Order* at Appx. A.

⁸ Individuals requesting access are hereby directed to email the Bureau at Stephen.Meil@fcc.gov with the subject line "IPCS 23-62, 12-375 – Request for 2024 IPCS Database" and must likewise submit an executed copy of the Recipient Acknowledgment via email to the same address. See, e.g., *Wireline Competition Bureau and Office of Economics and Analytics Make Incarcerated People's Communications Services 2023 Mandatory Data Collection Database Available to Eligible Individuals Pursuant to Protective Order*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 24-267 (WCB/OEA Mar. 18, 2024).

⁹ See *2023 IPCS Protective Order* at 6, para. 18; *2013 ICS Protective Order* at 5, para. 16.

APPENDIX A

Recipient Acknowledgment

Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services**WC Docket Nos. 23-62, 12-375**

By signing below, I certify that I am Counsel or Outside Consultant, as such terms are defined in the *2023 IPCS Protective Order* in WC Docket Nos. 23-62 and 12-375.¹ I further certify that I am a signatory of the Acknowledgement of Confidentiality appended either to the *2023 IPCS Protective Order* or the *2013 ICS Protective Order*, and that I understand it.² I acknowledge that I will be receiving instructions that will allow me to download a database (the 2024 IPCS Database) with data submitted to the Commission in WC Docket Nos. 23-62 and 12-375. I also acknowledge that the 2024 IPCS Database contains information that is not publicly available and that constitutes Confidential Information under the terms of the *2023 IPCS Protective Order*.

I agree that I will download no more than one copy of the Commission's 2024 IPCS Database and will delete the 2024 IPCS Database upon completion of this proceeding in accordance with the terms of the *2023 IPCS Protective Order*. I acknowledge that it is my obligation to ensure that my copy of the 2024 IPCS Database is not duplicated (in whole or in part) except as specifically permitted by the terms of the *2023 IPCS Protective Order*. I also acknowledge that it is my obligation to ensure that there is no disclosure of any Confidential Information in the 2024 IPCS Database except as specifically permitted by the terms of the *2023 IPCS Protective Order*. I further acknowledge that any use of any Confidential Information contained therein other than as permitted under the terms of the *2023 IPCS Protective Order* constitutes a violation of an order of the Commission.³ I further acknowledge that the provisions of the *2023 IPCS Protective Order* and the *2013 Protective Order* do not terminate at the conclusion of this proceeding.⁴

I acknowledge that I have read the above paragraph and agree to its terms. I attach a copy of my signed Acknowledgment from the *2023 IPCS Protective Order* or *2013 ICS Protective Order*. I confirm that with regard to Confidential Information, any objection to such Acknowledgment pursuant to the *2023 IPCS Protective Order* or the *2013 ICS Protective Order* has been resolved in my favor and the

¹ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Protective Order, DA 23-298, at para. 2 (WCB Apr. 5, 2023) (*2023 IPCS Protective Order*).

² *2023 IPCS Protective Order* at Appx. A; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954, 16960, Appx. A (WCB 2013) (*2013 ICS Protective Order*). Individuals that have previously executed and filed with the Commission the Acknowledgement of Confidentiality appended to the *2023 IPCS Protective Order* or the Acknowledgement of Confidentiality appended *2013 ICS Protective Order* and meet the other requirements of those orders do not need to refile those executed Acknowledgements. See *2023 Protective Order* at 3, para. 6.

³ *2023 IPCS Protective Order* at 4-6, paras. 9, 18; *2013 ICS Protective Order* at 4-5, paras. 7, 16.

⁴ *2023 IPCS Protective Order* at 6-7, para. 19; *2013 ICS Protective Order* at 5-6, para. 17.

Acknowledgment remains in full force and effect.⁵

Executed this ____ day of _____, 2024.

By: _____
Name: _____
Title: _____
Organization: _____
Party Representing: _____
Telephone: _____

⁵ 2023 *IPCS Protective Order* at 3-4, para. 6-7; 2013 *Protective Order* at 3, para. 5.



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 24-761

Released: August 4, 2024

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THE ACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY TROPICAL STORM DEBBY IN FLORIDA

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), at the request of the State of Florida and 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 Debby. DIRS is a web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, and satellite providers 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/dirs>. 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 DEBBY. 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 5th 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 FLORIDA:

Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Pasco, Pinellas, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

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, michael.caiafa@fcc.gov
John Healy (215) 847-8094 john.healy@fcc.gov
David Ahn (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 Debby in Florida, please go to
<http://www.fcc.gov/Debby>

- 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-24-762
Released: August 4, 2024

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 DEBBY

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 Debby. 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 Debby 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 Debby 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 Tropical Storm Debby 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 Debby 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

⁴ 47 CFR §§ 73.1250, 73.1680, 73.3542.

regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Space Bureau Guidance**
 - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at <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 Debby 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

⁵ 47 USC § 309(c)(2)(G).

- **Emergency Requests Pertaining to Numbering Resources:**
 - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
- **All Other Wireline Provider Requests:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireless Telecommunications Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Tropical Storm Debby 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-24-763
Released: August 4, 2024

THE FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO TROPICAL STORM DEBBY

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 Debby.

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-24-764
Released: August 4, 2024

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY TROPICAL STORM DEBBY

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 Debby.

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-24-765
Released: August 4, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS IMPACTED BY TROPICAL STORM DEBBY

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 Debby to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Tropical Storm Debby may cause widespread damage and significant impacts to communications services and infrastructure. 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 trees, replace damaged utility poles, and open roadways often result in significant, non-disaster 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 debris 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 (including trenching) 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 24-766
Released: August 4, 2024

**THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE ACTIVATION OF
THE MANDATORY DISASTER RESPONSE INITIATIVE (MDRI)
FOR COMMUNICATIONS IMPACTS FROM TROPICAL STORM DEBBY IN FLORIDA**

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission) hereby notifies the public of the activation of the Mandatory Disaster Response Initiative (MDRI) in the following locations as a result of a Disaster Information Reporting System (DIRS) activation in the State of Florida as a result of Tropical Storm Debby:¹

COUNTIES OF INTEREST FOR THIS MDRI ACTIVATION INCLUDE THE FOLLOWING:

Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Pasco, Pinellas, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

Upon the release of this Public Notice, all facilities-based mobile wireless providers operating in the above-referenced areas are hereby notified and required to: (1) provide for reasonable roaming under disaster arrangements when technically feasible;² (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies;³ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁴

Facilities-based mobile wireless providers that serve the above-referenced areas and that have provided contact information in DIRS prior to Tropical Storm Debby will be individually notified that the MDRI has been activated in their area.

PSHSB will announce when the MDRI has been deactivated by subsequent Public Notice. Such Public Notice will also announce any deadlines for facilities-based mobile wireless providers to report the

¹ Section 4.17(a)(3) authorizes the Chief of the Public Safety and Homeland Security Bureau to issue a Public Notice activating the MDRI in response to a state request. 47 CFR § 4.17(a)(3).

² See 47 CFR § 4.17(a)(3)(i) (detailing criteria for activating roaming under disaster arrangements).

³ See 47 CFR § 4.17(a)(3)(ii) (explaining what mutual aid arrangements must include).

⁴ 47 CFR § 4.17(a)(3)(i)-(v); see also FCC, *Wireless Network Resiliency During Disasters* (June 4, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

timing and effectiveness of their MDRI provisions to the Commission.⁵ Providers should familiarize themselves with the Commission's MDRI requirements.⁶

Details on the Mandatory Disaster Response Initiative can be found on the FCC website at <https://www.fcc.gov/wireless-network-resiliency-during-disasters>. For further information concerning this MDRI activation, please contact the following PSHSB staff and the FCC 24/7 Operations Center:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccoperationcenter@fcc.gov

- FCC -

⁵ See 47 CFR § 4.17(c).

⁶ 47 CFR § 4.17.

**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(TV)	)	FRN: 0019006501
Fort Walton Beach, Florida	)	LMS File No. 0000122920
	)	

MEMORANDUM OPINION AND ORDER AND FORFEITURE ORDER

Adopted: August 5, 2024

Released: August 5, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Forfeiture Order*, we grant the Petition for Reconsideration filed by B&C Communications, LLC (“Licensee” or “Petitioner”), licensee of television station WPAN(TV), Fort Walton Beach, Florida (Station), seeking reduction of a \$9,000 monetary forfeiture penalty.¹ Specifically, in the *2023 Forfeiture Order* the Video Division, Media Bureau (Division) found that the Licensee 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) of the Rules.² Based on the information provided in the Petition, we find that reduction of the fine imposed in the *2023 Forfeiture Order* is warranted and issue the instant decision finding that the Licensee is instead liable for a monetary penalty in the amount to \$6,000.

II. BACKGROUND

2. On August 16, 2023, the Division issued a *Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture of \$9,000.³ In the *NAL*, we found that the Licensee had failed to timely upload 10 issues/programs lists to the Station’s online public inspection file (OPIF) by the deadline established in section 73.3526(e)(11)(i) of the Rules.⁴ The *NAL* gave the Licensee thirty days to pay the full amount of

¹ Petition for Reconsideration of B&C Communications, LLC (Dec. 7, 2023) (Petition); *B&C Communications, LLC*, Forfeiture Order, DA 23-1065 (Vid. Div. Nov. 9, 2023) (*2023 Forfeiture Order*).

² 47 CFR § 73.3526(e)(11)(i).

³ *B&C Communications, LLC*, Notice of Apparent Liability for Forfeiture, DA 23-709 (Vid. Div. Aug. 16, 2023) (*NAL*).

⁴ 47 CFR § 73.3526(e)(11)(i). Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its 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. *Id.* 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. *Id.* 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 upload issues/programs lists to their OPIF).

the proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁵ On November 9, 2023, the Division issued a forfeiture order affirming its findings in the *NAL* and finding the Licensee liable in the amount of \$9,000 for its rule violations.⁶ On December 7, 2023, the Licensee submitted the Petition, requesting that the Division reconsider the amount of the proposed forfeiture and reduce it because three of the 10 issues/programs lists that were listed in the *2023 Forfeiture Order* as a basis for the fine were in fact timely filed.⁷ Included with the Petition were screenshots from the Station's OPIF showing that three of the lists were timely filed, as well as a date stamped copy of the Licensee's timely filed response to the *NAL*.⁸

III. DISCUSSION

3. Pursuant to section 1.106 of the Rules, reconsideration is appropriate when, among other circumstances, the petitioner demonstrates a material error or omission in the underlying order or there is a determination that consideration of the facts or arguments is required in the public interest.⁹ Here the Petitioner has provided documents showing that three issues/programs lists previously thought to have been late filed were in fact uploaded to the Station's OPIF in a timely manner. As a result, seven, not ten, issues/programs lists were filed late and we find that a reduction in the monetary forfeiture amount is warranted because the extent of violations at issue are less than previously considered when the Division issued the *NAL* and *2023 Forfeiture Order*. Further, the Petitioner provided documentation that it had timely filed a response to the *NAL* and that response had included documentation of those three lists having been timely filed. However, for unknown reasons the response to the *NAL* was not received by Division staff. We find that the Petition demonstrates a material error in the *2023 Forfeiture Order* and consideration of the facts and arguments are in the public interest. We therefore grant the Petition.

4. Based on the information provided in the Licensee's Petition and in accordance with section 503(b) of the Act,¹⁰ section 1.80 of the rules,¹¹ and the Commission's *Forfeiture Policy Statement*,¹² we find that the Licensee willfully and repeatedly violated section 73.3526(e)(11)(i) of the Rules¹³ by failing to file in timely manner a total of seven issues/programs lists and is liable for a forfeiture in the amount of

⁵ *NAL* at para. 11.

⁶ *2023 Forfeiture Order*.

⁷ Petition, paras. 2-3.

⁸ Petition at Attach. A. The response was date stamped as having been timely filed with the Office of the Secretary on September 15, 2024. For unknown reasons, Division staff did not receive a copy of the response to the *NAL*.

⁹ See 47 CFR § 1.106(c).

¹⁰ 47 U.S.C. § 503(b). Pursuant to section 503(b)(1)(B) of the communications Act of 1934, as amended (Act), a person who is found to have willfully and 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. See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2). 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 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 and the Commission has so interpreted the term in the section 503(b) context. See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992). 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." 47 U.S.C. § 312(f)(2).

¹¹ 47 CFR § 1.80.

¹² 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).

¹³ 47 CFR § 73.3526(e)(11)(i).

\$6,000.¹⁴ We reduce the amount of the monetary forfeiture from the \$9,000 monetary forfeiture set forth in the *2023 Forfeiture Order* to \$6,000 based on the revised number late filed issues/programs lists and the amount of time by which those lists were filed late. The Licensee does not dispute that seven of its Station's issues/programs lists were filed late. We also reaffirm our finding in the *NAL* and *2023 Forfeiture Order* that the Station has met the standard of review for renewal pursuant to section 309(k) of the Act.¹⁵ We will grant the Stations' pending Application by separate staff action.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to section 405(a) of the Act¹⁶ and section 1.106 of the Rules, B&C Communications, LLC's Petition for Reconsideration **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.61, 0.204, 0.283 and 1.80 of the Rules,¹⁷ that **B&C Communications, LLC SHALL FORFEIT** to the United States the sum of six thousand dollars (\$6,000) for its willful and repeated violation of section 73.3526(e)(11)(i) of the Rules.¹⁸

7. **Payment of the forfeiture shall be made within thirty (30) calendar days after the release of this Forfeiture Order.**¹⁹ **The Licensee shall send electronic notification of payment to VideoNAL@fcc.gov.** If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁰

8. 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),²¹ 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:²²

- 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

¹⁴ 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. *See Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15, App'x. A; 47 CFR § 1.80(b)(11), Table 1. 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." 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27; 47 CFR § 1.80(b)(11), Table 3.

¹⁵ 47 U.S.C. § 309(k). *See NAL* at paras. 8-9; *2023 Forfeiture Order* at n.15.

¹⁶ 47 U.S.C. § 405(a).

¹⁷ 47 U.S.C. § 503(b); 47 CFR §§ 0.61, 0.204, 0.283, and 1.80.

¹⁸ 47 CFR § 73.3526(e)(11)(i).

¹⁹ *See* 47 CFR § 1.80(g)(4).

²⁰ 47 U.S.C. § 504(a). *See* 47 CFR § 1.80(g)(5).

²¹ *See* 47 CFR § 1.80(i). Payments made using CORES do not require the submission of an FCC Form 159.

²² 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.

code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the 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.

9. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁴ A copy of the request must also be sent to VideoNAL@fcc.gov. 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.

- Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁵
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

10. **IT IS FURTHER ORDERED**, that a copy of this Memorandum Opinion and Order and

²³ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 CFR § 1.1914.

²⁵ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to B&C Communications, LLC, 155 Middle Plantation Lane, Gulf Breeze, Florida 32561 and by e-mail to billsmedia@gmail.com. A copy will also be sent to Station's counsel, Jeffrey L. Timmons, Esq., 974 Branford Lane NW, Lilburn, Georgia 30047 and by e-mail to jeff@timmonspc.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: <http://www.fcc.gov>

DA 24-768
Released: August 5, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF KINEX TELECOM, INC. TO PLANET NETWORKS, INC.

WC Docket No. 24-120

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the application filed by Kinex Telecom, Inc. (Kinex or Transferor) and Planet Networks, Inc. (Planet or Transferee) (together, 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 for the transfer of control of Kinex to Planet.²

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

Applicants and Description of Transaction

Kinex, a Virginia corporation, provides voice and broadband service, including interconnected Voice over Internet Protocol (VoIP) service, using fixed wireless and fiber technology to connect homes, businesses, and anchor institutions in Virginia.⁴ Kinex provides these services to approximately 1,600 residential and business customers and focuses on serving rural and remote areas in central Virginia.⁵ Kinex, an Eligible Telecommunications Carrier, receives high-cost universal service support through the Rural Digital Opportunity Fund (RDOF) support mechanism.⁶ Kinex is authorized to receive a total of \$9,975,489.60 in RDOF support to serve 7,595 locations in its designated census

¹ See 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

² Application for Consent to Transfer Control of Kinex Telecom, Inc. to Planet Networks, Inc., Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-120 (filed Apr. 19, 2024) (Application). Applicants filed a supplement to the Application on June 28, 2024. Supplement to Application for Consent to Transfer Control of Kinex Telecom, Inc. to Planet Networks, Inc., Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-120 (filed June 28, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Kinex Telecom, Inc. to Planet Networks, Inc.*, WC Docket No. 24-120, Public Notice, DA 24-640 (WCB 2024).

⁴ Application at 4, 15.

⁵ *Id.* at 4.

⁶ *Id.* at 11-12. Kinex also participates in the Lifeline program and will continue to do so post-consummation of the transaction. *Id.* at 12; Supplement at 3.

blocks in rural Virginia (Transferred Census Blocks).⁷ Kinex is owned by two U.S. citizens, James Garrett (60%) and Scott Chidester (20%), and Planet Capital, LLC (Planet Capital), a Delaware limited liability company wholly owned by Planet (20%).⁸

Planet is a Delaware corporation and holding company that does not provide telecommunications services.⁹ Planet, through Planet Capital, also a holding company, provides voice and broadband service using both fiber and coaxial cable technology to connect homes, businesses, and anchor institutions in rural markets of New York, New Jersey, and Pennsylvania¹⁰ through three wholly-owned competitive local exchange carrier (LEC) subsidiaries: Planet Fiber NY LLC; Planet Fiber NJ LLC; and Planet Fiber PA LLC.¹¹ Each competitive LEC subsidiary provides intraLATA transport, interconnected VoIP, and broadband Internet services.¹² Planet's only 10% or greater owner is Robert Boyle (52%), a United States Citizen.¹³

Pursuant to the terms of the proposed transaction, Planet Capital and Kinex entered into a Stock Purchase Agreement by which Planet Capital acquired a 20 percent equity interest in Kinex, and Kinex and its shareholders agreed to sell all of their equity to Planet Capital.¹⁴ Applicants state that upon approval by the Commission of this Application and by state authorities, Planet Capital will acquire the remaining 80% of Kinex, including Kinex's voice and broadband operations (both within and outside of its RDOF supported area), its RDOF support obligations, and its right to receive corresponding RDOF support.¹⁵ Applicants assert that at closing, Planet Capital will be responsible for Kinex's ongoing operations, customer service, network expansion, and deployment of RDOF facilities and services.¹⁶ Applicants also assert that Planet Capital will also own all of Kinex's existing facilities, including 350 miles of fiber serving RDOF locations, engineering plans, local permits, and other work product that Kinex has created and installed.¹⁷ Applicants explain that after consummation of the transaction, Kinex will continue and accelerate deployment of the RDOF-supported network and integrate such activities and operations into its own ongoing operations.¹⁸ Applicants further explain that no carrier change charges will result from the transaction, and no customer service or billing contact information will change as a result of the transaction.¹⁹ Applicants contend that the transaction will be transparent to the customers of the Applicants, as customers will continue to be served pursuant

⁷ Application at 1, 4; *see also Rural Digital Opportunity Fund Support Authorized for 2,521 Winning Bids*, AU Docket No. 20-34 and WC Docket No. 19-126 et al., Public Notice, 37 FCC Rcd 171, at Attach. A (WCB/OEA 2022) (*RDOF Public Notice*).

⁸ Application at 13-14.

⁹ *Id.* at 4, 13.

¹⁰ *Id.* at 4-5, 15.

¹¹ Supplement at 1.

¹² *Id.*

¹³ Application at 14.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 2, 14.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

to their existing operations.²⁰ Finally, Applicants assert that Kinex’s new ownership plans include upgrades to the Kinex network and the offering of faster speeds to subscribers at lower prices.²¹

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.²² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²⁴

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. None of Planet’s subsidiaries offers telecommunications services in Virginia.²⁵ Thus, there will be no physical overlap in service areas or reduction in service providers in any market as a result of the transaction.²⁶ Second, we expect no potential harm to existing customers to result from the transaction. Applicants attest that following consummation of the transaction, Kinex’s customers will continue to receive their services over the same network and under the same rates, terms, and conditions.²⁷ Applicants also attest that the transaction will be transparent to customers as “[n]o carrier change charges will result from the transaction, and no customer service or billing contact information will immediately change as a result

²⁰ *Id.*

²¹ *Id.* at 7.

²² 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, 17001, 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*)).

²³ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, 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).

²⁴ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, 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).

²⁵ Application at 4.

²⁶ *Id.* at 4, 10.

²⁷ *Id.* at 3, 6.

of the transaction.”²⁸ Applicants aver that the transaction “will not result in any delays in deployment of services consistent with the applicable public interest obligations associated with receipt of RDOF funding.”²⁹ Accordingly, the transaction will not result in any loss or impairment of service for either Applicants’ subscribers.³⁰

Planet commits to meeting all public interest and performance obligations associated with the receipt of Kinex’s RDOF support,³¹ and the record indicates that Planet has the technical, financial, and managerial expertise to do so after consummation of the transaction.³² Indeed, Planet asserts it will “bring additional management capabilities, staff resources, capital resources, and inventory/purchasing power to the combined entity”³³ in order “to meet Kinex’s RDOF buildout milestones and performance obligations in a timely manner.”³⁴ Planet also intends to “retain all Kinex management post-closing.”³⁵ Applicants assert that “Planet does not plan to make material changes to Kinex’s RDOF deployment technologies or network architecture, other than potential upgrades to existing GPON 2.5/1.25G service areas to XGS-PON 10/10G over the coming year.”³⁶ In addition, Planet confirms it has “set aside dedicated capital to fund the costs of deploying Kinex’s network facilities to provide RDOF-compliant service in the Transferred Census Blocks” and “under Planet’s control, Kinex will use future RDOF support for covered services and is not taking on any debt repayment obligations that will impair program compliance or otherwise significantly affect its costs to deploy service.”³⁷ 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.³⁸ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.³⁹ 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.⁴⁰

Applicants state that the proposed transaction is consistent with the public interest.⁴¹ Specifically, Applicants assert that “Planet will bring a number of positive operational contributions to the delivery of service to these RDOF areas that will benefit consumers,” including “a larger labor force, substantial financial resources, substantial managerial experience, goodwill in rural Virginia, and

²⁸ *Id.*

²⁹ *Id.* at 9.

³⁰ *Id.* at 3.

³¹ Application at 6-7; Supplement at 2.

³² Application at 3, 7-10; Supplement at 2-3.

³³ Supplement at 2,

³⁴ Application at 8; *see also id.* at 5, 15.

³⁵ Supplement at 2.

³⁶ Application at 9.

³⁷ *Id.* at 8, 10.

³⁸ *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

³⁹ *See id.* at 9237-38, paras. 275-76.

⁴⁰ *See id.*

⁴¹ Application at 7-10, 16.

access to infrastructure in and near the RDOF areas it will be assuming.”⁴² Applicants further assert that “this experience and know-how will result in expeditious deployment of RDOF-supported facilities and services.”⁴³ Moreover, Applicants state that Planet has detailed plans to complete the RDOF deployment that Kinex initiated and having “conducted extensive due diligence of Kinex and the market and as 20 percent shareholder in Kinex, Planet is already familiar with Kinex’s plans and deployment activities and is already assisting Kinex with its ongoing buildout of the RDOF project.”⁴⁴ As such, we anticipate that the transition will be smooth, transparent, and existing customers of Kinex will benefit from the transaction given that Planet plans to expeditiously “upgrade the Kinex network and offer faster speeds to subscribers at lower prices.”⁴⁵

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,⁴⁶ and accelerating private sector deployment of advanced services is one of the aims of the Act.⁴⁷ In light of Planet’s commitments to meet all of Kinex’s federal high-cost support obligations⁴⁸ and the fact that Planet is prepared to devote additional capital to accelerate the deployment of fiber to all additional locations in the Transferred Census Blocks and upgrade the network to offer customers “faster speeds . . . at lower prices,”⁴⁹ 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, we grant the Application, subject to Applicants’ compliance with all applicable obligations.⁵⁰

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.⁵¹ 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.

⁴² *Id.* at 14-15.

⁴³ *Id.*; Supplement at 3 (explaining that the transaction will result in accelerated deployment of RDOF-supported facilities due to “their good supply chain and relationships with vendors, and thus access to materials needed to complete the deployment”).

⁴⁴ Application at 9.

⁴⁵ *Id.* at 7, 9.

⁴⁶ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

⁴⁷ See *Verizon-TracFone Order*, 36 FCC Rcd at 17002, 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”)).

⁴⁸ Application at 6-11; Supplement at 2.

⁴⁹ Application at 3, 7, 11; Supplement at 3.

⁵⁰ See *RDOF Public Notice*, 37 FCC Rcd at 171-79 (listing obligations of authorized support recipients).

⁵¹ We direct Applicants to transmit a copy of this Public Notice to the Universal Service Administrative Company. We further direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 24-120 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

For further information regarding the grant of the Application, please contact Megan Danner, Wireline Competition Bureau, Competition Policy Division, at megan.danner@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of FM	)	MB Docket No. 24-111
Allotments, FM Broadcast Stations (Canadian,	)	RM-11980
Texas)	)	
	)	
Application for Construction Permit to Modify	)	File No. 0000220011
FM Station KPQP, Panhandle, Texas	)	Facility ID No. 189483
	)	

REPORT AND ORDER

Adopted: August 2, 2024

Released: August 5, 2024

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the Notice of Proposed Rule Making issued in response to a Petition for Rulemaking filed by Hispanic Target Media Inc. (Petitioner).¹ The *Notice* proposed the substitution of Channel 285C1 for vacant Channel 235C1 at Canadian, Texas. No comments or counterproposals were received in response to the *Notice*. For the reasons discussed below, we: (1) substitute Channel 285C1 for vacant Channel 235C1 at Canadian, Texas; (2) grant the above-captioned hybrid modification application (Application) for Station KPQP, Panhandle, Texas; and (3) modify the license for Station KPQP, Panhandle, Texas to specify operation on Channel 235C3 in lieu of Channel 291C3.

II. BACKGROUND

2. The *Notice* proposed the substitution of Channel 285C1 for vacant 235C1 at Canadian, Texas to accommodate the hybrid Application requesting the modification of KPQP's facilities by substituting Channel 235C3 for Channel 291C3 at Panhandle, Texas. As stated in the *Notice*, Petitioner claims that grant of the Application will serve the public interest because it greatly enhances KPQP's service area from 28,674 persons to 145,397 persons, an increase of over 400 percent. Additionally, Petitioner certifies that if Channel 285C1 is substituted for vacant Channel 235C1 at Canadian, it commits to construct and license the new facility for KPQP on Channel 235C3 at Panhandle upon issuance of the construction permit.²

III. DISCUSSION

3. Section 316(a) of the Communications Act of 1934, as amended, (Act) permits us to modify a license or construction permit if such action is in the public interest.³ We find that grant of the hybrid Application is in the public interest because it would allow KPQP to enhanced service to the community of Panhandle, Texas and the surrounding areas. Accordingly, we substitute Channel 285C1

¹ See *Canadian, Texas*, Notice of Proposed Rule Making, DA 24-111, rel. May 1, 2024 (MB 2024), 2024 WL 1960765 (*Notice*); see also 89 FR 41371 (published May 13, 2024).

² See *Notice*, para. 2.

³ 47 U.S.C. § 316(a).

for vacant Channel 235C1 at Canadian, Texas, grant the KPQP hybrid Application, and modify the KPQP license to specify operation on Channel 235C3 in lieu of 291C3 at Panhandle, Texas.

4. A staff engineering analysis indicates that Channel 285C1 can be allotted to Canadian, Texas, consistent with the minimum distance separation requirements of the Commission's rules,⁴ with a site restriction of 6.1 km (3.8 miles) north of the community. The reference coordinates are 35-57-35 NL and 100-24-24 WL.

5. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,⁵ do not apply to a rulemaking proceeding to amend the Table of FM Allotments, section 73.202(b) of the Commission's rules.⁶ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.⁷ 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 2002.⁸

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, that the Petition for Rulemaking, filed on March 27, 2024 by Hispanic Target Media, Inc., IS GRANTED.

7. IT IS FURTHER ORDERED, that the hybrid Application for Station KPQP, Panhandle, Texas, filed by Hispanic Target Media, Inc., as amended on March 27, 2024 (FCC File No. 0000220011), IS GRANTED.

8. IT IS FURTHER ORDERED, that the license of station KPQP, Panhandle, Texas, IS MODIFIED to specify operation on Channel 235C3 in lieu of Channel 291C3.

9. IT IS FURTHER ORDERED, that pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective **September 19, 2024**, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Canadian, Texas	285C1

10. The window period for filing applications for Channel 285C1 at Canadian, Texas will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in a subsequent order.

11. IT IS FURTHER ORDERED, that the Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

⁴ 47 CFR § 73.207(b).

⁵ 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).

⁶ 47 CFR § 73.202(b).

⁷ 44 U.S.C. §§ 3501-3520.

⁸ 44 U.S.C. § 3506(c)(4).

12. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.
13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau



PUBLIC NOTICE

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

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

DA 24-770

Released: August 5, 2024

COMMENT AND REPLY COMMENT DATES SET FOR ARTIFICIAL INTELLIGENCE IN POLITICAL ADVERTISING NPRM

MB Docket No. 24-211

Comment Date: September 4, 2024

Reply Comment Date: September 19, 2024

On July 25, 2024, the Commission released a Notice of Proposed Rulemaking seeking to provide greater transparency regarding the use of artificial intelligence-generated content in political advertising.¹ 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 5, 2024.³ Comments must be submitted no later than September 4, 2024. Reply comments must be submitted no later than September 19, 2024. Commenters should follow the filing instructions provided in paragraph 39 of the *NPRM*.⁴ The *NPRM* is also available on the Commission's website.⁵

For additional information on this proceeding, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7454. Press inquiries should be directed to Nancy Murphy, Nancy.Murphy@fcc.gov, (202) 418-1043.

By the Chief, Media Bureau

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¹ *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211, FCC 24-74 (rel. July 25, 2024) (*NPRM*).

² *See id.* at 1.

³ 89 Fed. Reg. 63381 (August 5, 2024).

⁴ *NPRM* at 21, para. 39.

⁵ <https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf>.



PUBLIC NOTICE

Federal Communications Commission
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Internet: www.fcc.gov
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DA 24-771

Released: August 5, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU OPENS THE EAS TEST REPORTING SYSTEM (ETRS) FOR FILINGS AND ESTABLISHES OCTOBER 4, 2024 AS THE DEADLINE FOR FILING ETRS FORM ONE

PS Docket Nos. 15-94 and 15-91

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces that the Emergency Alert System (EAS) Test Reporting System (ETRS) is available for receipt of filings and directs EAS Participants¹ to submit their annual ETRS Form One for calendar year 2024 by no later than October 4, 2024.² ETRS is an online filing system by which EAS Participants submit their Form One information, which includes identifying and background information such as EAS designation, EAS monitoring assignments, facility location, equipment type, contact information, and other relevant data.³

I. FILING INFORMATION

A. ETRS Login and Weblinks

Filers can access ETRS by visiting the ETRS page of the Commission's website at <https://www.fcc.gov/general/eas-test-reporting-system>.⁴ Filers must use their registered FCC Username (Username) that is associated with the FCC Registration Numbers (FRNs) for which they will file. Filers that have already created a Username for use with another FCC system may access the ETRS with that Username. Filers that do not remember the password that corresponds with their Username may reset it at <https://apps2.fcc.gov/fccUserReg/pages/reset-passwd-identify.htm>. Filers that have not previously created a Username may do so by visiting the User Registration System at <https://apps2.fcc.gov/fccUserReg/pages/createAccount.htm>. Filers can associate their Username to an FRN by logging in at <https://apps.fcc.gov/cores/userLogin.do> and clicking on the appropriate option. Additional information regarding creating and associating FRNs with a Username can be found on the CORES FAQs page at <https://apps.fcc.gov/cores/publicHome.do?faq=true&csfrToken=>.

¹ See 47 CFR §§ 11.2(b), 11.11(a) (defining EAS Participants as entities that are required to comply with the Commission's EAS rules and identifying such entities to include 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).

² Pursuant to Section 11.61 of the Commission's rules, EAS Participants must renew their identifying information required by the ETRS Form One on a yearly basis. See 47 CFR § 11.61(a)(3)(iv)(A).

³ ETRS is also used to receive information about EAS Participants' performance in nationwide tests of the EAS to assess the reliability and effectiveness of the nation's alert and warning infrastructure. While the Federal Emergency Management Agency will not conduct a nationwide EAS test this year, EAS Participants nevertheless are subject to the annual requirement to file ETRS Form One.

⁴ Instructional videos regarding registration and completion of the ETRS Form One are also available on the ETRS website, <https://www.fcc.gov/general/eas-test-reporting-system>.

B. Excepted Filers

All EAS Participants—including Low Power FM stations (LPFM), Class D non-commercial educational FM stations, and EAS Participants that are silent pursuant to a grant of Special Temporary Authority—are required to register and file in ETRS, with the following exceptions: Analog and digital low power television (LPTV) stations that operate as television broadcast translator stations, FM broadcast booster stations and FM translator stations that entirely rebroadcast the programming of other local FM broadcast stations, and analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) are not required to register and file in ETRS. However, the hub station (or common studio or control point) is required to register and file in ETRS.⁵

C. Miscellaneous Filing Information

Filers can update previously filed forms in ETRS by clicking on the “My Filings” menu option and then clicking on the record for that form. Broadcasters can pre-populate Form One by completing the FRN and Facility ID fields. Cable systems can pre-populate Form One by completing the FRN and Physical System ID (PSID) fields. EAS Participants that pre-populate Form One using a Facility ID number or a PSID number are urged to review their pre-populated data to ensure accuracy.

Each EAS Participant should file a separate copy of Form One for each of its EAS decoders, EAS encoders, or units combining such decoder and encoder functions. For example, if an individual is filing for a broadcaster (or cable headend) that uses two units combining decoder and encoder functions, that individual should file two copies of Form One. EAS Participants using an intermediary device/CAP-to-EAS converter in accordance with Section 11.56(b) should enter both the intermediary device and the EAS encoder/decoder in the EAS equipment section of the same Form One.

The Bureau urges EAS Participants to review Form One as soon as possible to allow sufficient time for possible corrections. EAS Participants are allowed thirty days after submission to submit any updates or corrections to their filings.⁶

II. FURTHER ASSISTANCE

For further information, contact Leah Calvo, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at 1-202-418-7833 or Leah.Calvo@fcc.gov.

Filers may contact FCC Licensing Support for assistance with creating a Username or other CORES troubleshooting via the web at <https://www.fcc.gov/wireless/available-support-services>, or by telephone at 1-877-480-3201. The support hours of operation are 8 a.m. to 6 p.m. Eastern Time, Monday through Friday (except Federal holidays). Filers may contact Bureau staff for assistance with ETRS filings via ETRS@fcc.gov.

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⁵ See 47 CFR § 11.11(b).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-772
Released: August 5, 2024

**THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE EXPANSION OF
THE DISASTER INFORMATION REPORTING SYSTEM AND THE MANDATORY
DISASTER RESPONSE INITIATIVE FOR COMMUNICATIONS IMPACTED BY
HURRICANE DEBBY IN SOUTH CAROLINA**

The Federal Communications Commission (Commission) is expanding its disaster data collection to include counties in South Carolina impacted by Hurricane Debby.

On August 4, 2024, the Public Safety and Homeland Security Bureau (PSHSB) of the 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 Tropical Storm, now Hurricane Debby.¹ The State of South Carolina has asked the Commission to expand the data collection to include specified counties in South Carolina with initial reports due on Tuesday, August 6, 2024.

ADDITIONAL COUNTIES FOR DIRS ACTIVATION INCLUDE:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

DIRS is a web-based system that communications providers, including wireless, wireline, broadcast, cable, and Voice over Internet Protocol providers 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/dirs>. 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 DEBBY. 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.**

¹ *The Federal Communications Commission Announces the Activation of the Disaster Information Reporting System for Communications Impacted by Tropical Storm Debby in Florida*, Public Notice, DA 24-761 (rel. Aug. 4, 2024) (“Tropical Storm Debby DIRS Activation PN”).

(EDT) on Tuesday August 6, 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.

MDRI EXPANDED TO COUNTIES IN SOUTH CAROLINA

With the expansion of the DIRS activation to include counties in South Carolina, facilities-based mobile wireless providers are reminded of their obligations under the Mandatory Disaster Response Initiative (MDRI), which will also apply to these additional counties in South Carolina for which DIRS is activated.²

ADDITIONAL COUNTIES FOR MDRI ACTIVATION INCLUDE:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

Upon the release of this Public Notice, all facilities-based mobile wireless providers operating in the above-referenced areas are hereby notified and required to: (1) provide for reasonable roaming under disaster arrangements when technically feasible;³ (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies;⁴ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁵

Facilities-based mobile wireless providers that serve the above-referenced areas and that have provided contact information in DIRS prior to Tropical Storm Debby will be individually notified that the MDRI has been activated in their area.

PSHSB will announce when the MDRI has been deactivated by subsequent Public Notice. Providers should familiarize themselves with the Commission's MDRI requirements.⁶ Details on the

² *The Federal Communications Commission Announces the Activation of the Mandatory Disaster Response Initiative (MDRI) for Communications Impacts from Tropical Storm Debby in Florida*, Public Notice, DA 24-766 (rel. Aug. 4, 2024) (“*Tropical Storm Debby MDRI Activation PN*”).

³ See 47 CFR § 4.17(a)(3)(i) (detailing criteria for activating roaming under disaster arrangements).

⁴ See 47 CFR § 4.17(a)(3)(ii) (explaining what mutual aid arrangements must include).

⁵ 47 CFR § 4.17(a)(3)(i)-(v); see also FCC, *Wireless Network Resiliency During Disasters* (June 4, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

⁶ 47 CFR § 4.17.

Mandatory Disaster Response Initiative can be found on the FCC website at <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

DIRS AND MDRI REMAIN ACTIVATED IN:

Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Pasco, Pinellas, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.⁷

Please continue to provide information for the impacted counties that are already in the disaster area.

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

For further information concerning DIRS, 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, fccops@fcc.gov

For further information concerning the MDRI, please contact:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccops@fcc.gov

For more information on the FCC's response to Hurricane Debby, please go to www.fcc.gov/Debby.

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⁷ See *Tropical Storm Debby DIRS Activation PN* at 1; see also *Tropical Storm Debby MDRI Activation PN*.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-773

Released: August 5, 2024

FCC ANNOUNCES AUGUST 13, 2024 MEETING OF THE COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

GN Docket No. 17-208

In this Public Notice, the Wireline Competition Bureau announces that, consistent with the Federal Advisory Committee Act,¹ the Federal Communications Commission's (FCC or Commission) Communications Equity and Diversity Council (CEDC) will hold the second meeting of the CEDC under its new charter on August 13, 2024.² The agenda for the meeting will include introducing CEDC working group chairs, discussing working group plans going forward, and receiving information from the FCC's Office of Communications Business Opportunities and Wireline Competition Bureau.

The August 13, 2024 CEDC meeting will be held in a hybrid manner, from 10:00 am to 2:00 pm ET. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at <https://www.fcc.gov/live>. While the CEDC's meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The public may follow the meeting on the Commission's YouTube page at <https://www.youtube.com/user/fccdotgovvideo>. Members of the public may submit questions during the meeting to livequestions@fcc.gov. Members of the public also may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Any comments should be filed in GN Docket No. 17-208.

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

¹ 5 U.S.C. App. 10.

² Notice of this meeting was published in the Federal Register on July 25, 2024, available at <https://www.federalregister.gov/documents/2024/07/25/2024-16287/meeting-of-the-communications-equity-and-diversity-council>.

More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>. You may also contact Rodney McDonald, Designated Federal Officer (DFO) of the CEDC, (202) 418-7513, Rodney.McDonald@fcc.gov; Diana Coho, Deputy DFO of the CEDC, (717) 338-2848, Diana.Coho@fcc.gov; Jaime McCoy, Deputy DFO of the CEDC, (202) 418-2320, Jaime.McCoy@fcc.gov; or Sima Nilsson, Deputy DFO of the CEDC, (202) 418-2708, Sima.Nilsson@fcc.gov.

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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>
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DA 24-774
August 6, 2024

**OFFICE OF INTERNATIONAL AFFAIRS SEEKS COMMENT ON RECOMMENDATIONS
APPROVED BY THE WORLD RADIOCOMMUNICATION CONFERENCE
ADVISORY COMMITTEE**

OIA Docket No. 24-30

Comments Due: August 20, 2024

On August 5, 2024 the World Radiocommunication Conference Advisory Committee (WRC-27 Advisory Committee) approved and provided for Commission consideration of its draft recommendations on issues that will be considered by the 2027 World Radiocommunication Conference (WRC-27). Based upon an initial review of the draft recommendations forwarded to the Commission, the Office of International Affairs, in coordination with other Commission Bureaus and Offices, tentatively concludes that we can generally support most of the content found in attachment in the WRC-27 Advisory Committee draft recommendation.

We seek comment on the draft recommendations provided by the WRC-27 Advisory Committee (Attachment A). In addition, we seek comment on the National Telecommunications and Information Administration (NTIA) draft proposals in Attachment B. The comments provided by interested parties will assist the FCC in its upcoming consultations with the U.S. Department of State and NTIA in the development of U.S. positions for WRC-27. The proposed recommendations that are attached to this Public Notice may evolve in the course of interagency discussions as we approach WRC-27 and, therefore, do not constitute any final U.S. Government positions on any issue.

The deadline for comments on the proposed recommendations is August 20, 2024. It is necessary that all comments be received by August 20, 2024, in order to allow sufficient time to finalize the U.S. position before commencement of regional WRC-27 preparatory meetings.

All comments are to reference OIA Docket No. 24-30 and to specific recommendations by WAC document number. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before August 20, 2024.

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

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

ECFS: <https://www.fcc.gov/ecfs/filings>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Office of the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD, 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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 and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, one copy of each pleading must be sent to: Gregory Baker, Designated Federal Official, Global Strategy and Negotiation Division, Office of International Affairs, 45 L Street, N.E., Washington, D.C. 20554; email: WRC-27@fcc.gov. The complete texts of these recommendations are available by accessing the FCC's WRC-27 web site at: www.fcc.gov/wrc-27. For further information, please contact Gregory Baker at (202) 919-0758 or by email at: WRC-27@fcc.gov.

Attachment A

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.9: to consider appropriate regulatory actions to update Appendix 26 to the Radio Regulations in support of aeronautical mobile (OR) high frequency modernization, in accordance with Resolution 41 (WRC-23).

ISSUE:

The High Frequency (HF) band has been identified as an effective alternative to provide much needed integrated and interoperable Beyond-Line-of-Sight (BLOS) communications capabilities. HF is also a critical and affordable option for global broadcasting and amateur radio, and an alternative when other communications services are unavailable due to natural disasters or other national emergencies. Commercial financial institutions are exploring the use of HF long-distance delivery for financial users requiring low latency data. The challenge with meeting the growing requirement for modern HF is the need for the increased bandwidth allocations that would be required to achieve HF's advantages while not impeding the legacy frequency needs of incumbent users, groups, or countries.

There are modern wide band HF (WBHF) technologies available that enable the flexibility to use wider channel bandwidths within advanced digital HF and enhanced applications that can support a shared environment while also maximizing spectrum efficiency. Current wideband technology and methodologies are available that automate the negotiating of the Radio Frequency (RF) environment while mitigating any harmful interference to users in, or adjacent to, a desired HF frequency range.

Appendix 26 of the ITU Radio Regulations limits Aeronautical Mobile (OR) to a maximum bandwidth of 2.8 kHz.

BACKGROUND:

WRC-23 through Resolution 411 (WRC-23) resolves to invite the Radiocommunication Sector to review Appendix 26 of the Radio Regulations and consider necessary changes, as appropriate, to Appendix 26, on the basis of studies without modifying the existing area allotments, and while taking into account that the current use of the narrowband systems shall remain unchanged and shall not be impacted nor precluded by the revision of Appendix 26.

The band 3500 – 4000 kHz is allocated to the Amateur Radio Service on a primary basis in Region 2, and is allocated in the 3500 – 3800 kHz range in Region 1 and the 3500 – 3900 kHz range in Region 3. This band is intensively used for Amateur Radio operations throughout Region 2, and that use is expected to increase.

U.S. VIEW:

The U.S. supports updating Appendix 26 of the Radio Regulations to allow for the use of wider channel bandwidth in the following bands allocated to AM(OR)S as long as sharing studies show the ability of HF wideband systems to ensure compatibility with existing AM(OR)S systems and with other incumbent services in the following bands, and adjacent allocations:

- 3025 – 3155 kHz
- 3900 – 3950 kHz (Region 1 only)
- 4700 – 4750 kHz
- 5680 – 5730 kHz
- 6685 – 6765 kHz

- 8965 – 9040 kHz
- 11175 – 11275 kHz
- 13200 – 13260 kHz
- 15010 – 15100 kHz
- 17970 – 18030 kHz

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.7: to consider studies on sharing and compatibility and develop technical conditions for the use of International Mobile Telecommunications (IMT) in the frequency bands 4 400-4 800 MHz, 7 125-8 400 MHz (or parts thereof), and 14.8-15.35 GHz taking into account existing primary services operating in these, and adjacent, frequency bands, in accordance with Resolution **256 (WRC-23)**.

BACKGROUND:

The United States is actively working on the implementation of its National Spectrum Strategy (NSS), including the 7.125 – 8.4 GHz range.¹ This comprehensive strategy to modernize spectrum policy aims to make the most efficient use possible of spectrum resources for incumbent services while expanding access to advanced wireless broadband networks and technologies, whether terrestrial-, airspace-, satellite- and space-based. The drive for technological innovation is expected to boost industrial competition, ensure the adoption of secure networks, foster scientific advancements and promote digital equity and inclusion. In order to ensure spectrum resources are available to meet expected demand, the United States has identified several bands meriting in-depth study in the near term, including the 7.125 – 8.4 GHz band which will be studied for wireless broadband use (on a licensed and/or unlicensed basis, or shared-spectrum basis), though some sub-bands eventually may be studied for other uses. There are, however, a variety of mission-critical Federal operations, as well as non-Federal operations, in this band (including Fixed, Fixed Satellite, Mobile, Mobile Satellite, Space Research, Earth Exploration Satellite and Meteorological Satellite services) that will make it challenging to repurpose portions of the band while protecting incumbent users from harmful interference. A national spectrum policy that maximizes flexible use of spectrum will foster technological innovation and global leadership, reduce barriers to expanding spectrum access (especially for historically underrepresented rural communities), stimulate industry and government research, provide access to state-of-the-art technologies and services, and allow Federal agencies to pivot when new mission requirements are contemplated. Such a policy must respect current spectrum users, ensuring incumbents are protected from harmful interference and avoiding risks to national security, public safety, scientific research, or commercial operations.

Spectrum sharing opportunities are also a consideration when reallocation decisions are proposed. Whenever possible, and ideally early in the process of considering potential repurposing, prospective new users of a spectrum band to consider coexistence mechanisms that leverage technology, expertise, and knowledge of the involved parties to safeguard incumbent missions. Evolving to a “designed to share whenever feasible” mindset will accelerate efficient and effective use of spectrum for all users.

WRC-27 will consider the possibility of making available specific mid-band spectrum frequencies 4.4 – 4.8 GHz and 7.125 – 8.4 GHz, either on a regional or global basis, and the 14.8 – 15.35 GHz band, through an identification for the terrestrial component of International Mobile Telecommunications (IMT).

Today, the early vision for 6G, also known as IMT-2030, is starting to emerge as the mobile and broader vertical ecosystems embark on foundational technology research preparing for the next decade of innovations. Commercial launches are expected later in the decade.

¹ <https://www.ntia.gov/issues/national-spectrum-strategy>

Contiguous spectrum bandwidths other than those currently available are necessary to address growing and intensifying consumer data and ubiquitous connectivity demands. As such, discussions have already started to identify the most desirable frequency bands to address these needs. While no single frequency range satisfies all of consumers' needs, spectrum in the upper mid-band range (below 10 GHz) is well-suited to bolster current offerings and facilitate next generations of wireless technologies.

It is important to recognize that the incumbent services in the candidate bands, and adjacent bands, provide important systems for public safety, aviation, earth observation and other uses operating under the existing primary allocations, and such operations must be protected. Incumbent services did not arbitrarily select these bands for their operations—the same features which make them favorable for 5G or 6G are similarly necessary to fulfill the critical missions of incumbents. Sharing and compatibility studies are required to examine the feasibility of introducing IMT into these bands while ensuring the protection of those services to which the frequency band is allocated on a primary basis without imposing additional constraints on those services, in the same or adjacent band.

U.S. VIEW:

Alternative 1: The United States supports the sharing and compatibility studies called for in Resolution **256 (WRC-23)**, with a view to ensure the protection of services to which the frequency bands are allocated on a primary basis, including in adjacent bands, as appropriate. Based on these studies, the United States supports appropriate action at WRC-27.

Alternative 2: The United States supports the sharing and compatibility studies called for in Resolution **256 (WRC-23)**, with a view to ensure the protection of services to which the frequency bands are allocated on a primary basis, including in adjacent bands, as appropriate. The United States supports appropriate action at WRC-27 where studies demonstrate coexistence mechanisms can be employed to safeguard incumbent operations and can ensure that such an identification to IMT would not impose additional regulatory or technical constraints on those incumbent services.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.10: to consider developing power flux density and equivalent isotropically radiated power limits for inclusion in Article 21 of the Radio Regulations for the fixed-satellite, mobile-satellite and broadcasting-satellite services to protect the fixed and mobile services in the frequency bands 71-76 GHz and 81-86 GHz, in accordance with Resolution 775 (Rev.WRC-23).

BACKGROUND:

WRC-2000 adopted co-primary allocations in the 71-76 GHz and 81-86 GHz band for terrestrial (fixed and mobile services) and the fixed-satellite, mobile-satellite and broadcasting-satellite services. Due to technological readiness, however, administrations historically have deployed on the primary fixed service allocation in the 71-76 GHz and 81-86 GHz bands for high-capacity fixed wireless backhaul systems for point-to-point (P-P) applications. According to industry data, in the United States wireless data traffic exceeded 73.7 trillion megabytes, a 157% increase since 2018 and a 38% increase since 2021. To accommodate the growing demand for IMT services, wireless network deployments trend towards improving broadband coverage and increasing the availability of higher speeds to more subscribers. Ultimately, this translates in an increase of mobile broadband throughput and/or capacity.

As a result, new base stations are being designed to facilitate mounting on lamp posts and other street level structures. As it is difficult and costly to provide necessary backhaul connections using fiber to these structures, microwave links using the optimal characteristics of the 71-76 and 81-86 GHz bands are being deployed to support wideband integrated access backhaul solutions.

In an effort to further its goal to expand access to broadband, in 2024² the United States' Federal Communication Commission (FCC) agreed to changes to the fixed service rules to allow deployment for smaller, lighter backhaul antennas to facilitate 5G deployments, reducing site costs. Beyond, the fixed service use, the FCC also decided to enable mobile service use for point-to-point communications to aircraft and ships. The FCC also reaffirmed the co-primary status of the fixed-satellite service in the band and that first-in-time priority rights serve as the foundation for coexistence between fixed service and fixed-satellite service in the band.

Satellite systems in the 71-76 GHz and 81-86 GHz bands have also significantly matured since WRC-2000. Thousands of operational satellites use the 71-76 and 81-86 GHz bands today, supported by a ground network of high-capacity gateway earth stations. These networks are essential to accommodate growing demand for high-speed, low-latency satellite broadband service and related applications, including by providing backhaul for end-users in rural and remote areas that lack terrestrial connectivity. Similar to high-capacity fixed wireless backhaul systems, these earth stations use high-gain, directional beams that enable coexistence with fixed service deployments in close proximity.

Recognizing the growing terrestrial use of the 70/80 GHz bands to support future mobile networks, and the increasing number of satellite filings in the frequency bands, WRC-23 agreed to study the protection

² FCC Updates Rules in 70/80/90 GHz, available at: <https://www.fcc.gov/document/fcc-updates-rules-708090-ghz-bands-0>, released Jan 26, 2024.

of terrestrial services from satellites services, under agenda item 1.10 and Resolution **775**.³ Accordingly, studies should be performed to determine the power flux-density (pfd) and equivalent isotropically radiated power (e.i.r.p.) limits to be included in Article **21** for satellite services (fixed-satellite service (FSS), mobile-satellite service (MSS) and broadcasting-satellite service (BSS)) to protect the current and planned fixed and mobile services in the frequency bands 71-76 GHz and 81-86 GHz.

U.S. VIEW:

The United States supports studies called for in Resolution **775 (Rev.WRC-23)**. The development of pfd and e.i.r.p. limits in Article 21 for the FSS, MSS and BSS must ensure the protection of current and planned fixed and mobile services in the frequency bands 71-76 and 81-86 GHz.

³ Resolution **775**, considering *b*) states: “that sharing conditions between the fixed service, mobile service and satellite services in the frequency bands 71-76 GHz and 81-86 GHz could not be fully developed at WRC-2000 due to lack of available information on these services at the time.”

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.1: to consider the technical and operational conditions for the use of the frequency bands 47.2-50.2 GHz and 50.4-51.4 GHz (Earth-to-space), or parts thereof, by aeronautical and maritime earth stations in motion communicating with space stations in the fixed-satellite service and develop regulatory measures, as appropriate, to facilitate the use of the frequency bands 47.2-50.2 GHz and 50.4-51.4 GHz (Earth-to-space), or parts thereof, by aeronautical and maritime earth stations in motion communicating with geostationary space stations and non-geostationary space stations in the fixed-satellite service, in accordance with Resolution **176 (Rev.WRC-23)**.

BACKGROUND:

Previous WRC's have addressed the spectrum needs and use of aeronautical and maritime ESIM, which includes the adoption of technical and regulatory requirements to allow such operations. In the Radio Regulations, Resolutions **902 (WRC-03)**, **156 (WRC-15)**, **169 (WRC-19)**, **121 (WRC-23)** and **123 (WRC-23)** define technical and regulatory rules to allow ESIM communicating with GSO FSS networks and/or non-GSO FSS systems to provide broadband communications in various frequency bands.

Resolution **176 (Rev.WRC-23)** calls for studies on possible use of frequency bands 47.2-50.2 GHz (Earth-to-space) and 50.4-51.4 GHz (Earth-to-space), or parts thereof, by aeronautical and maritime earth stations in motion to communicate with space station in the fixed-satellite service. These studies should assess the spectrum needs for additional A-ESIMs and M-ESIMs, as well as the sharing and compatibility with the services allocated in these frequency bands (and adjacent) on a primary basis. Given Resolution **176** considers both the use of GSO and NGSO ESIMs, the aggregate impact should be accounted for in the studies.

Under Resolution **176 (Rev. WRC-23)**, Agenda Item 1.1 considers the frequency band 47.2-50.2 GHz for FSS (Earth-to-space) NGSO A-ESIM and M-ESIM operations. This band is often paired with the 37.5-42.5 GHz FSS (space-to-Earth) frequency band, which is not covered by Resolution **176** and is not addressed under this agenda item. It is noted that under RR No. **21.16.4**, the applicability of the pfd limit values in Table **21-4**, in the bands 37.5-40 GHz and 40.5-42.5 GHz, for space stations operating in NGSO systems with 100 or more satellites is subject to further study.

U.S. VIEW:

The United States supports the sharing and compatibility studies called for in Resolution **176 (WRC-23)**, with a view to ensure the protection of services to which the frequency bands are allocated on a primary basis. Studies should take into account:

- In Region 2, the frequency band 47.2-48.2 GHz is identified for the terrestrial component of IMT (see No. **5.553B**), the frequency bands 47.2-47.5 GHz and 47.9-48.2 GHz are identified for HAPS (see No. **5.552A**) and the frequency band 48.2-50.2 GHz is identified for use by high-density applications of the fixed-satellite services (see No. **5.516B**).
- The frequency band 48.94-49.04 GHz is allocated to the radio astronomy service (RAS) on a primary basis, and administrations are urged to take all practicable steps to protect the RAS from harmful interference, in accordance with No. **5.149**.
- The frequency band 50.2-50.4 GHz is allocated to the Earth exploration-satellite service (EESS) (passive), where No. **5.340** applies.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.2: to consider possible revisions of sharing conditions in the frequency band 13.75-14.0 GHz to allow the use of uplink fixed-satellite service earth stations with smaller antenna sizes, in accordance with Resolution **129 (WRC-23)**.

ISSUE:

The use of smaller antenna sizes for Fixed Satellite Service (FSS) earth stations uplinking to geostationary orbit (GSO) and non-GSO (NGSO) in the frequency band 13.75-14.0 GHz requires technical and operational studies to ensure the continued protection of the radiolocation service (RLS) and space research service (SRS), as addressed in Nos. **5.502** and **5.503** of the ITU Radio Regulations (RR).

BACKGROUND: Resolution **129 (WRC-23)** calls for studies on possible revisions of sharing conditions in the frequency band 13.75-14 GHz to allow the use of uplink fixed-satellite service (FSS) earth stations with smaller antenna sizes. In accordance with Administrative Circular CA/270, capturing the decisions made at Conference Preparatory Meeting (CPM-1), Working Party (WP) 4A is responsible for performing these studies.

The frequency band 13.75-14.0 GHz has been subject to regulatory and allocation changes over the years. WARC-92 added an allocation, further revised by WRC-03, to the FSS (Earth-to-space) in this band that impose requirements for minimum size of satellite earth station antennas operating in the 13.75-14 GHz band (1.2 m for geostationary satellite orbit (GSO) networks and 4.5 m for non-geostationary satellite orbit (non-GSO) systems) and on the maximum power flux density that an earth station can transmit towards the sea. WRC-03 introduced changes to Nos. **5.502** and **5.503** that made it possible to use earth station antennas of 1.2 meters for the GSO FSS networks. WRC-03 did not introduce any changes in Nos. **5.502** and **5.503** regarding earth station antennas for NGSO systems.

The purpose of these limitations is to protect the radiolocation and space research services. In addition to the fact that satellite technology has changed tremendously since these conditions were developed 20 years ago, there may also be changes in the SRS and RLS that operate in this band, their applications and co-existence conditions.

Additionally, there is a significant mismatch between available non-planned uplink and downlink FSS spectrum in the 10-15 GHz range for smaller satellite user terminals, e.g., VSATs, satellite news gathering, in all three ITU Regions. In Region 2, the spectrum available for uplink without limitation is only 500 MHz whereas for downlink, it is 1000 MHz, twice the uplink spectrum. Same for Region 1 and 3. This mismatch between uplink and downlink bandwidth highlights the need to identify more uplink capacity that can be efficiently used by smaller antennas that can communicate with GSO and non-GSO satellites.

Innovation both in GSO high throughput satellites (HTS), software defined satellites (SDS) and non-GSO satellites along with innovation in earth station terminals capable of providing large throughputs and broadband connections, has highlighted the critical need for additional Ku-band uplink spectrum to meet the increasing demand for connectivity to customers, particularly for the use of small user terminals, such as VSATs. There has been a rapid increase in number of operational satellite networks and use of orbit and spectrum resources over the last decades corresponding to increased development of a variety of applications and satellite user equipment. Given these advancements FSS customers are requiring higher data transmission rates, smaller user terminals, and increasingly flexible products. From an operational point of view, the frequency band 13.75-14.0 GHz, being adjacent to the 14.0-14.5 GHz (Earth-to-space)

band currently used for uplink, would allow FSS operators to meet the demands of customers in a straightforward and inexpensive manner.

WRC-23 again identified the need for further studies to address the operational and technical limitations regarding the minimum antenna size and associated power limitations for GSO and NGSO FSS earth stations in the 13.75-14.0 GHz band. Resolution **129** (WRC-23) acknowledges the increasing demand for uplink spectrum by smaller antennas for earth stations and the necessity to review sharing conditions with the RLS and SRS to support the evolving needs of FSS applications efficiently and rationally.

U.S. VIEW:

The United States supports possible revisions of sharing conditions in the frequency band 13.75-14.0 GHz to allow the use of uplink FSS earth stations with smaller antenna sizes and revised power limitations. Any possible revisions of sharing conditions in the 13.75-14.0 GHz band to accommodate smaller antenna sizes for uplink FSS earth stations must ensure protection of the RLS and SRS services that operate in the band, and shall not impose any additional constraints on these services. The sharing studies should determine any potential impact from smaller FSS antennas into the RLS and SRS stations and develop provisions to protect these incumbent services from unacceptable interference or performance degradation.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.3: to consider studies relating to the use of the frequency band 51.4-52.4 GHz to enable use by gateway earth stations transmitting to non-geostationary-satellite orbit systems in the fixed-satellite service (Earth-to-space), in accordance with Resolution **130 (WRC-23)**;

BACKGROUND: In accordance with Resolution **130 (WRC-23)**, WRC-27 agenda item 1.3 invites sharing and compatibility studies with existing services, including in adjacent bands, including protection of the fixed and mobile services, and studies relating to the suitability of revising conditions associated with the primary allocation to the FSS in the frequency band 51.4-52.4 GHz (Earth-to-space) to enable its use by gateway earth stations of non-GSO FSS systems (Earth-to-space), and the relevant regulatory studies.

Considering that satellite systems are increasingly being used to deliver broadband services, they play a crucial role in enabling universal broadband access. Next-generation fixed-satellite service (FSS) technologies are set to enhance broadband speeds significantly, with even faster rates expected shortly. Technological advancements, such as improvements in spot-beam technologies and frequency reuse, are being employed by the FSS in frequency bands above 30 GHz to optimize spectrum efficiency.

Furthermore, fixed-satellite applications in these higher frequency bands, such as feeder links, may be more compatible with other radiocommunication services compared to high-density FSS (HDFSS) applications. For that reason, a new allocation for GSO FSS earth stations in the frequency band 51.4-52.4 GHz were ultimately identified by WRC-19. However, the current frequency allocations to the FSS in the 51.4-52.4 GHz band do not support non-geostationary-satellite orbit (non-GSO) gateway, failing to meet the expected needs of these systems. Report ITU-R S.2461 identified spectrum needs for both GSO and non-GSO FSS earth stations in the frequency band 51.4-52.4 GHz.

The frequency band 51.4-52.4 GHz is allocated on a primary basis in the three Regions to the Fixed-Service and the Mobile Service and is available for high-density applications in the fixed service, as indicated in No. 5.547. The 50.2-50.4 GHz frequency band is also allocated to the Earth exploration-satellite service (EESS) (passive), with non-GSO FSS unwanted emission limits provided in Resolution 750 (Rev.WRC-19). The 52.6-54.25 GHz band is similarly allocated to the EESS (passive). Consideration should be given to possibly revising Resolution 750 (Rev.WRC-19) to include the non-GSO FSS unwanted emission limit for the 52.6-54.25 GHz band and possibly modifying the GSO FSS unwanted emission limit for the same band, based on study results, considering the aggregation of interference into EESS (passive).

U.S. VIEW: The United States supports studies and the development of a regulatory framework to enable use of the frequency band 51.4-52.4 GHz by NGSO FSS gateways (Earth-to-space) in accordance with Resolution **130 (WRC-23)**, while ensuring the protection of existing primary services, including terrestrial (Mobile and Fixed) services, GSO FSS in those frequency bands and EESS/SRS (passive) in nearby bands.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

AGENDA ITEM 1.4: to consider a possible new primary allocation to the Fixed-Satellite Service (space-to-Earth) in the frequency band 17.3-17.7 GHz and a possible new primary allocation to the Broadcasting-Satellite Service (space-to-Earth) in the frequency band 17.3-17.8 GHz in Region 3, while ensuring the protection of existing primary allocations in the same and adjacent frequency bands, and to consider equivalent power flux-density limits to be applied in Regions 1 and 3 to non-geostationary- satellite systems in the fixed-satellite service (space-to-Earth) in the frequency band 17.3-17.7 GHz, in accordance with Resolution **726 (WRC-23)**.

BACKGROUND: WRC-23 considered the need to encourage the development and implementation of new technologies in the fixed-satellite service (FSS) for delivery of broadband applications and the mismatch in usable downlink bandwidth in the FSS in Region 3 in the frequency range 17-20 GHz associated with the uplink frequency range of 27-30 GHz. The band 17.3-17.8 GHz is already allocated to the BSS (space-to-Earth) in Region 1. The 17.3-17.7 GHz band is already allocated to the FSS (space-to-Earth) in Region 1 and coexists with BSS feeder links (Earth-to-space) that are subject to Appendix 30A. In addition, WRC-23 agreed a new primary allocation to the FSS in the space-to-Earth direction in the frequency band 17.3-17.7 GHz in Region 2.

In accordance with Resolution **726 (WRC-23)**, WRC-23 invited sharing and compatibility studies between the FSS (space-to-Earth) and BSS (space-to-Earth) with existing services in the frequency band 17.3-17.7 GHz for Region 3 for a possible new allocation to the FSS in the frequency band 17.3-17.7 GHz for Region 3 and to the BSS (space-to-Earth) in the frequency band 17.3-17.8 for Region 3, while ensuring protection of existing primary services, and without adversely affecting the existing allocations to the FSS (Earth-to-space), including assignments to the BSS feeder links in Appendix **30A**. WRC-23 further invited consideration of the applicability of Region 2 non-GSO FSS efd limits pertaining to the frequency band 17.3-17.7 GHz to Regions 1 and 3, so as to ensure the protection to GSO networks.

Current satellite communication trends encourage the development and implementation of new technologies in FSS for broadband applications to provide high-capacity and low-cost means of broadband communication even to the most isolated regions of the world. The allocation of the 17.3-17.7 GHz to FSS and 17.3-17.8 GHz to BSS systems in Region 3 would facilitate global harmonization in the use of satellite radiocommunication technology and would facilitate the efficient use of this spectrum worldwide while aligning with the Regions 1 and 2 Table of Allocations. The inclusion of an FSS downlink allocation in 17.3-17.7 GHz in Region 3 and a new BSS allocation in 17.3-17.8 GHz (space-to-Earth), would provide a contiguous amount of FSS spectrum for broadband applications throughout all three Regions.

U.S. VIEW: The United States supports studies, in accordance with Resolution **726 (WRC-23)**, to develop appropriate regulatory provisions to facilitate a new primary allocation to the Fixed-Satellite Service (space-to-Earth) in the 17.3-17.7 GHz band and to the Broadcasting-Satellite Service (space-to-Earth) in the 17.3-17.8 GHz band in Region 3, while ensuring the protection of existing primary allocations in the same and adjacent frequency bands. The inclusion of an FSS downlink allocation in 17.3-17.7 GHz in Region 3 and a new BSS allocation in 17.3-17.8 GHz (space-to-Earth), would provide a contiguous amount of FSS spectrum for broadband applications throughout all three Regions.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-23

Agenda Item 1.5 - to consider regulatory measures, and implementability thereof, to limit the unauthorized operations of non-geostationary-satellite orbit earth stations in the fixed-satellite and mobile-satellite services and associated issues related to the service area of non-geostationary-satellite orbit satellite systems in the fixed-satellite and mobile-satellite services, in accordance with Resolution **14 (WRC-23)**.

BACKGROUND:

WRC-23 considered the active implementation of non-geostationary-satellite orbit (non-GSO) systems in the fixed-satellite service (FSS) and mobile-satellite service (MSS) with a global service area, and reports to the Radio Regulations Board (RRB) from administrations regarding the presence of unauthorized transmissions of transmitting earth stations of non-GSO FSS and MSS systems within their territory. WRC-23 noted that:

- RR No. **18.1** provides that no transmitting station may be established or operated by a private person or by any enterprise without a license issued in an appropriate form and in conformity with the provisions of the Radio Regulations by or on behalf of the government of the country to which the station in question is subject;
- that administrations involved in the provision of satellite services, including notifying administrations of satellite networks or systems, are subject to Article **18**;
- that Resolution **22 (Rev.WRC-23)**, on measures to limit unauthorized uplink transmissions from earth stations, resolves that the operation of transmitting earth stations within the territory of an administration shall be carried out only if authorized by that administration; and
- that Resolution **25 (Rev.WRC-23)**, on operation of global satellite systems for personal communications, resolves that administrations licensing global satellite systems and stations intended to provide public personal communications by means of fixed, mobile or transportable terminals shall ensure, when licensing these systems and stations, that they can be operated only from the territory or territories of administrations having authorized such service and stations in compliance with Articles **17** and **18**, in particular No. **18.1**;

In Resolution **14 (WRC-23)**, taking account of the foregoing, WRC-23 resolved to invite the ITU-R to conduct studies on regulatory measures to limit the unauthorized operations of non-GSO FSS and MSS earth stations in the Earth-to-space direction in order to address and cease such operations, taking into account technical and operational aspects, as appropriate. WRC-23 also invited the ITU-R to conduct studies on regulatory measures (taking into that Member States may wish to exclude their territories from the service area of non-GSO FSS and/or MSS satellite systems) and the implementability of such measures, *without adversely affecting the provision of service in the rest of the service area* of the non-GSO satellite system.

U.S. VIEW:

The United States supports ITU-R studies under Resolution **14 (WRC-23)** to reaffirm that the regulatory measures currently in Article **18** of the Radio Regulations, along with Resolutions **22 (Rev.WRC-23)** and **25 (Rev.WRC-23)**, includes an adequate framework for addressing Earth-to-space unauthorized operations of non-GSO earth stations. As noted in the background, these regulatory provisions contain measures to limit unauthorized uplink transmissions from earth stations and resolves that the operation of

transmitting earth stations within the territory of an administration shall be carried out only if authorized by that administration.

Non-geostationary satellite systems provide crucial communication services worldwide. Additionally, some non-geostationary satellite systems provide essential safety of life communications for global aeronautical and maritime services. Existing regulatory provisions impose mandatory licensing and authorization obligations which respect the sovereignty and regulatory responsibilities of individual Member States. It is important to avoid unnecessary overregulation and ensure the continuity of essential communication services, particularly in emergency and distress scenarios. Any regulatory changes that would negatively affect non-GSO services and undercut the current effective regulatory regime should be avoided.

Given these considerations and the comprehensive nature of the current regulations in Article 18 and Resolutions **22 (Rev.WRC-23)** and **25 (Rev.WRC-23)**, the United States does not see a need for changes to the Radio Regulations under this agenda item.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.11: to consider the technical and operational issues, and regulatory provisions, for space-to-space links among non-geostationary and geostationary satellites in the frequency bands 1 518-1 544 MHz, 1 545-1 559 MHz, 1 610-1 645.5 MHz, 1 646.5-1 660 MHz, 1 670-1 675 MHz and 2 483.5-2 500 MHz allocated to the mobile-satellite service, in accordance with Resolution **249 (Rev. WRC 23)**.

BACKGROUND: WRC-27 is considering taking appropriate regulatory actions for the provision of space-to-space links among non-geostationary and geostationary satellites in the frequency bands 1 518-1 544 MHz, 1 545-1 559 MHz, 1 610-1 645.5 MHz, 1 646.5-1 660 MHz, 1 670-1 675 MHz and 2 483.5-2 500 MHz allocated to the mobile-satellite service to facilitate relaying data from non-geostationary (non-GSO) space stations through satellite systems or networks in the mobile-satellite service.

The landscape of satellite communications has seen a significant uptick in the deployment and operation of small non-geostationary (non-GSO) satellites, particularly those on short-duration missions (e.g. “cubesats”). Considering that many non-GSO small satellites and cubesats traditionally operate with limited and non-real-time connectivity to Earth stations, advancements have explored the potential for continuous access across their orbits, leveraging operating host non-GSO mobile-satellite service (MSS) systems. Concurrently, geostationary (GSO) MSS operators are also providing communications access to LEO satellites via space-to-space links.

The evolving regulatory landscape and the increasing deployment and operation of small non-geostationary (non-GSO) satellites reflect a collective move towards maximizing the utility of satellite networks, which is supported by WRC-27 AI 1.11 studies towards developing the necessary provisions to secure the regulatory recognition for such space-to-space operations while protecting incumbent services.

It is necessary to study the impact on, and to protect, other services, including Earth-to-space and space-to-Earth operation within the MSS, from the operation of space-to-space links in the frequency bands included under this agenda item, taking into account applicable footnotes to the Table of Frequency Allocations, to ensure compatibility with incumbent services in these frequency bands and the adjacent frequency bands and avoid harmful interference. Studies will need to be conducted on the technical and operational characteristics, and protection, sharing and potential compatibility between satellite-to-satellite links and the allocated primary services in the frequency ranges and adjacent bands specified in Resolution **249 (Rev. WRC-23)**. These studies are underway in the ITU.

In accordance with RR No. **5.344**, in the United States the band 1 452-1 525 MHz is allocated to the fixed and mobile services on a primary basis (see also No. **5.343**). RR No. **5.343** prescribes that “In Region 2, the use of the band 1 435-1 535 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.” And RR **5.348B** provides that stations in the mobile-satellite service in 1518-1525 MHz not claim protection from aeronautical mobile telemetry stations in the territory of the United States. Table **21-4** in Article 21 provides stringent power flux-density levels applied to the Mobile-satellite (space-to-Earth) operating in the band 1518-1525 MHz to ensure the protection of aeronautical mobile telemetry applicable to the territory of the United States in the band 1518-1525 MHz.

U.S. VIEW: The United States supports the consideration of appropriate technical and regulatory provisions at WRC-27 to address Resolution **249 (Rev. WRC-23)** and provide for accommodating space-to-space links in the frequency bands 1 518-1 544 MHz, 1 545-1 559 MHz, 1 610-1 645.5 MHz, 1 646.5-1 660 MHz, 1 670-1 675 MHz and 2 483.5-2 500 MHz while ensuring the protection of, and without imposing additional regulatory or technical constraints on, incumbent services in these bands

and adjacent frequency bands.

The United States is also of the view that the studies of space-to-space operations for consideration under this agenda item should be limited to links operating in the same direction of transmission as provided in the current allocations for the mobile-satellite service in the frequency bands under consideration. The U.S. is further of the view that the existing regulatory framework, including that set forth in Article 21 referenced above, and operational practices continue to govern transmissions for the downlink (space-to-Earth) direction, and should be appropriately applied to the space-to-space transmissions, thereby ensuring no additional interference or compatibility issues with incumbent service in the subject and adjacent bands. Additionally, in the frequency band 1518-1525 MHz, the U.S. is of the view that additional regulatory provisions may be necessary to ensure that AMT transmitters are not constrained by new MSS (space-to-space) receivers.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.13: to consider studies on possible new allocations to the mobile-satellite service for direct connectivity between space stations and International Mobile Telecommunications (IMT) user equipment to complement terrestrial IMT network coverage, in accordance with Resolution **253 (WRC-23)**.

BACKGROUND:

As technologies evolve, terrestrial mobile network operators have been looking for ways to extend cellular coverage in order to keep users connected particularly in remote areas. Direct-to-cellular technologies promises to deliver mobile connectivity in previously unreachable areas and allows mobile network operators to extend their existing spectrum holdings to connect unmodified mobile handsets in unserved, or unreachable areas and in the wake of emergencies.

Resolution **253 (WRC-23)** calls for studies to facilitate direct connectivity between space stations and International Mobile Telecommunications (IMT) user equipment to complement terrestrial IMT network coverage. Sharing and compatibility studies in bands between 694 - 2 700 MHz identified for IMT in the Radio Regulations and reflected in Recommendation ITU-R M.1036 are essential to ensure the protection of incumbent services, including in adjacent frequency bands in accordance with the Radio Regulations. Resolution **253 (WRC-23)** also calls for possible technical and operational measures to ensure that such envisaged space stations do not cause harmful interference nor claim protection from stations in the mobile service.

In addition, in March of 2024, the United States adopted a domestic regulatory framework—the first of its kind in the world—to enable collaborations between satellite operators and terrestrial service providers using spectrum bands between 600 MHz - 2000 MHz allocated to the terrestrial service in order to expand coverage to a terrestrial licensee’s subscribers, especially in remote, unserved, and underserved areas, and increase the availability of emergency communications. The framework adopted is an initial step to encourage the development of Supplemental Coverage from Space (“SCS”) while minimizing the risks of harmful interference to existing terrestrial and satellite networks.

Terrestrial wireless broadband operators have made billions of dollars in investments supporting IMT infrastructure supporting the needs of businesses and consumers, which continues to drive the global economy. Introducing new wireless infrastructure carries both opportunities and risks. Studies must confirm that existing terrestrial IMT users are protected against harmful interference as considers are made to support this new type of scaled deployment.

In addition, there are a variety of mission-critical operations in frequency bands between 694 - 2 700 MHz (e.g. aeronautical mobile telemetry, fixed, fixed satellite, radionavigation-satellite, space research, earth exploration satellite and meteorological satellite services) that will make it challenging to adopt an MSS allocation under this agenda item while protecting incumbent users from harmful interference.

U.S. VIEW:

In prioritizing the studies relevant to this agenda item, the United States believes that studies should focus on those frequency bands identified for the terrestrial component of IMT. Studies should take into account the protection of IMT as well as other incumbent services in and or adjacent to these bands, to ensure their protection.

While the U.S. does not support additional MSS spectrum allocations in the frequency bands 1 435-1 525 MHz or 2 360-2 395 MHz for the United States, as these bands are studied, it should be noted that in some countries, the use of the band by the aeronautical mobile service for telemetry has priority over other uses by the mobile service (See No. **5.343** and **5.394**). The U.S. is of the view that PFD values should be incorporated into Article 21 towards the U.S. to ensure in band protection of AMT in the frequency bands 1435-1525 MHz and 2360-2395 MHz, taking into account Recommendation ITU-R M.1459, as well as applying suitable limits in adjacent bands to protect AMT through appropriate regulatory measures. Studies may be necessary as to whether additional constraints beyond those found in Recommendation ITU-R M.1459 are needed to protect AMT.

In addition, since the user equipment would remain the same and regulatory changes to the terrestrial component of IMT are out of scope of the agenda item, the U.S. believes that studies should be limited to the impact of satellite operations in the space-to-Earth direction. As the envisioned space stations would be a complementary service to existing IMT terrestrial operations, any regulatory considerations for the MSS should be on a secondary basis.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.14: studies on possible new frequency allocations to the mobile-satellite service (MSS) in the frequency bands 2 010-2 025 MHz (Earth-to-space) and 2 160-2 170 MHz (space-to-Earth) in Regions 1 and 3 and 2 120-2 160 MHz (space-to-Earth) in all Regions

BACKGROUND:

Current and future MSS systems will deliver more robust voice and data communication applications representing a practical and effective method for delivering connectivity particularly in unserved and underserved areas, and enable access to essential information, educational resources, healthcare services, and economic opportunities. To address the additional MSS spectrum needs to support these benefits, WRC-27 agenda item 1.14 will study the sharing and compatibility between new MSS operations and incumbent services.

Resolution **254 (WRC-23)** explores the feasibility of new MSS frequency allocations in the frequency bands 2 010-2 025 MHz (Earth-to-space) and 2 160-2 170 MHz (space-to-Earth) in Regions 1 and 3 and 2 120-2 160 MHz (space-to-Earth) in all Regions. ITU-R studies will focus on the –

- relevant spectrum requirements and technical, operational, and regulatory matters regarding these possible new MSS allocations;
- protection of existing services that are allocated on a primary basis, as well as services in adjacent frequency bands; and
- possible technical, operational, and regulatory measures to ensure the protection of existing services and their future development.

U.S. VIEW:

The United States supports studies on possible new MSS frequency allocations consistent with Resolution **254 (WRC-23)**. Based on the results of studies, the United States may propose appropriate regulatory action consistent with those study results.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.15: to consider studies on frequency-related matters, including possible new or modified space research service (space-to-space) allocations, for future development of communications on the lunar surface and between lunar orbit and the lunar surface, in accordance with Resolution **680 (WRC-23)**.

BACKGROUND:

WRC-27 AI 1.15 aims to address sharing/compatibility studies and spectrum needs related to systems in the space research service (SRS) planned for operations on the lunar surface, or systems in lunar orbit communicating with systems on the lunar surface, in specific frequency ranges, in accordance with Resolution **680 (WRC-23)**.

To support these planned and future lunar and cislunar activities, a variety of communication and position/navigation/timing links are needed, as depicted in Figure 1 below:

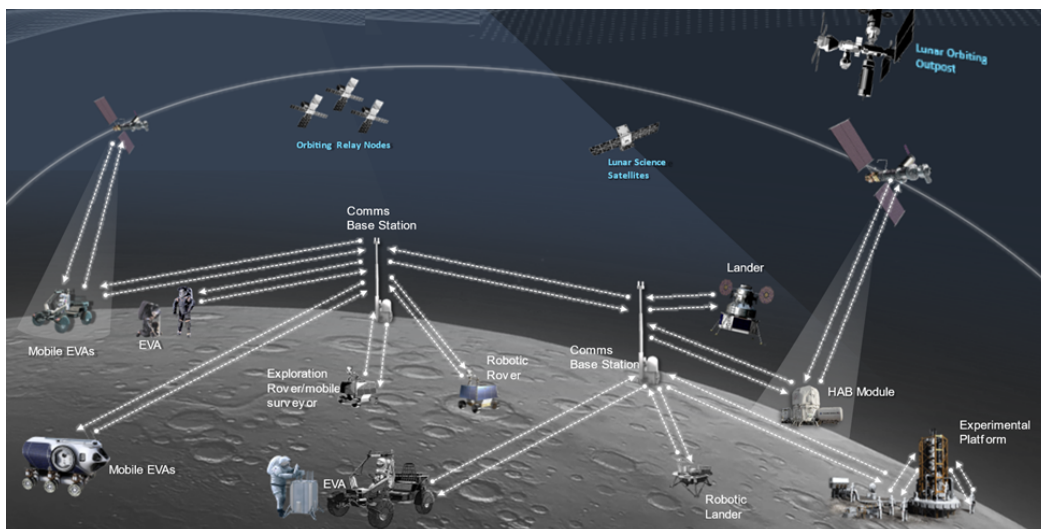


Figure 1. Envisioned Lunar Surface/Lunar Orbit Communication Architecture

In November 2022, the National Science & Technology Council released the National Cislunar Science and Technology Strategy outlining the strategy to advance the United States' scientific, exploration, and economic development activities in Cislunar space. This strategy also affirms the interagency efforts including the Artemis Accords and space related STEM-Education, the ITU Radio Regulations, and technology maturation efforts to pave ways for a long-term robust space economy. To support these planned and future Cislunar activities, basic infrastructure is needed, including communications, PNT (position, navigation and timing), transportation, and radio frequency spectrum management.

Communication between satellites, as well as between the Earth and Earth-orbiting satellites, is already well-defined and understood within the spectrum regulatory environment. In addition to the technical challenges, developing a set of regulatory procedures for on and around the Moon could enable these stations to co-exist without harmful interference and expedite space commerce development in the years to come. As noted in the Director's Report to WRC-23, the Bureau has received enquiries from

administrations and operators about the appropriate services and class of stations to be used for radio stations operating on the surface of the Moon. These include stations that are intended to be used while in motion or during halts at unspecified points or fixed (unrelated to the radio communication service) with respect to on or near the surface of the moon. Based on Article 1 of the Radio Regulations, the Bureau can only classify them as space stations, even if the station will be operating on the surface of the Moon. However, it may be useful in the development of regulatory procedures to create distinct classes of stations to distinguish space stations that are operating on the surface of the Moon, as compared to space stations that are orbiting around the Moon or in outer space.

In the United States, the near-term scientific exploration and discovery objectives are currently being undertaken by NASA in collaboration with industry partners and numerous space agencies around the Region and the world under the Artemis Program. In addition, a series of precursor commercial lander programs are being carried out to conduct technology demonstrations and survey the lunar environment in preparation for a return of humans to the Moon in the next several years, working toward achieving a sustainable and robust presence on the Moon in the next decade.

Technical studies are under way in the ITU-R to enable the implementation of advance wireless technologies for lunar surface direct communications between landers, rovers and extravehicular activity (EVA) astronauts conducting sortie missions, and with systems in lunar orbit. Resolution **680 (WRC-23)** *resolves to invite the ITU Radiocommunication Sector to complete in time for the 2027 world radiocommunication conference 1 to 5* provide the specific framework for studies and scope for which to meet the mission objectives.

The scientific discoveries and technological advancements resulting from the near-term space exploration objective are anticipated to further promote new industries and technologies and accelerate space commerce. To this end, Resolution **680 (WRC-23)** also invites ITU-R, to begin studies and provide a progress report through the Director of the BR to WRC-27 regarding future radiocommunications needs for activities in the lunar vicinity beyond space research, considering existing space radiocommunication services and regulatory provisions.

US VIEW:

The U.S. supports the studies called for under Agenda Item 1.15, including studies of potential new or modified frequency allocations and/or identifications to the SRS with appropriate regulatory provisions, for communications on the lunar surface or in lunar orbit communicating with systems on the lunar surface. The sharing and compatibility studies should take into account provisions to protect the unique environment of the Shielded Zone of the Moon (SZM) for radioastronomical measurements, the spectrum needs of systems operating in the lunar environment, and taking into account the unique propagation considerations of the Moon, the protection of incumbent services in the frequency bands listed in Resolution **680 (WRC-23)**.

The United States also supports ITU-R regulatory studies on the appropriate regulatory procedures for stations on the Moon in order to facilitate notification to the BR.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.16: to consider studies on the technical and regulatory provisions necessary to protect radio astronomy operating in specific Radio Quiet Zones and, in frequency bands allocated to the radio astronomy service on a primary basis globally, from aggregate radio-frequency interference caused by non-geostationary-satellite orbit systems, in accordance with Resolution **681 (WRC-23)**.

BACKGROUND:

In accordance with Resolution **681 (WRC-23)**, WRC-27 agenda item 1.16 invites studies on how the interference from unwanted emissions from non-GSO satellite systems operating in the adjacent bands to a set of RAS primary frequency bands affects the operation of RAS stations. Table 1 provides the information for the frequency bands of interest.

Table 1

Radio astronomy frequency band	Active space service operating in adjacent or nearby frequency band	Active space service (space-to-Earth)	Scope
10.6-10.7 GHz	10.7-10.95 GHz	FSS	<i>Resolves etc. 1 and 2</i>
42.5-43.5 GHz	42-42.5 GHz	FSS	<i>Resolves etc. 2</i>
76-77.5 GHz	74-76 GHz	FSS, MSS	<i>Resolves etc. 2</i>
94.1-95 GHz	95-100 GHz	RNSS, MSS	<i>Resolves etc. 2</i>
100-102 GHz	95-100 GHz	RNSS, MSS	<i>Resolves etc. 1 and 2</i>
114.25-116 GHz	116-119.98 GHz	ISS	<i>Resolves etc. 1 and 2</i>
130-134 GHz	123-130 GHz	FSS, MSS, RNSS	<i>Resolves etc. 2</i>

Additionally, Resolution **681** calls for studies on the possible recognition of the two specific RQZs listed below, and the impact of non-GSO systems operation on these two sites:

- the Square Kilometre Array Observatory in South Africa;
- the Atacama Large Millimeter/submillimeter Array (ALMA) in Chile

The Resolution does not explain what is meant by recognition and does not address the fact that many frequency bands used at these two sites are not allocated to the radio astronomy service.

U.S. VIEW:

The United States supports conducting the sharing and compatibility studies called for in Resolution **681 (WRC-23)**, *resolves 1* to 2 and limited to the frequency bands in Table 1 of Resolution 681 (WRC-23) where the Radio Astronomy Service (RAS) is allocated on a primary basis.

With respect to the RQZ studies for the two identified sites, the United States is of the view that there are important issues to be addressed regarding *resolves 3* to 6, including the meaning of “recognition” and taking proper account of the status of frequency allocations in the ranges used for observations at the two sites. These studies should focus on providing tools that help manage the coexistence without the need for changes to the Radio Regulations and take into account the allocation status of the services in each

frequency band in which observations are conducted. It is important not to take actions that could impose undue constraints on NGSO operations critical for global communications infrastructure.

Accordingly, the United States does not support any changes to the Radio Regulation as a result of the activities undertaken with respect to Resolution **681 (WRC-23)** *resolves 3 to 6*.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.17: to consider regulatory provisions for receive-only space weather sensors and their protection in the Radio Regulations, taking into account the results of ITU Radiocommunication Sector studies, in accordance with Resolution **682 (WRC23)**.

BACKGROUND:

Space weather events can cause harm to important sectors of national economies, security and human welfare. As such, space weather data is important, and regulatory protection is needed for space weather observation systems, including receive-only sensors that measure low-level emissions from sources such as the Sun, the Earth's atmosphere and other celestial bodies. Article **29B** and Resolution **675 (WRC-23)** defines space weather and designates space weather sensors to the meteorological aids service in the subset MetAids (space weather). However, no notification of frequency assignments to a station used for space weather observation be made by administrations under MetAids (space weather) until WRC-27 introduces the corresponding allocations in Article **5**.

Resolution **682 (WRC-23)** calls for studies on system characteristics, spectrum needs, and appropriate protection criteria for receive-only space weather sensors. Additionally, it calls for sharing and compatibility studies of receive-only sensors for potential new primary allocations to MetAids (space weather) in six specific frequency bands (27.5-28.0 MHz, 29.7-30.2 MHz, 32.2-32.6 MHz, 37.5-38.325 MHz, 73.0-74.6 MHz and 608-614 MHz) without claiming protection from, or constraining the future development of, incumbent services in these or adjacent frequency bands. Lastly, it calls for studies on possible regulatory provisions to accommodate the notifications of receive-only space weather sensor stations for inclusion in the Master International Frequency Register (MIFR).

The importance of space weather radiocommunication applications has been emphasized by several international bodies, including the World Meteorological Organization (WMO), the Intergovernmental Panel on Climate Change (IPCC), the United Nations Office for Disaster Risk Reduction (UNDRR), the International Civil Aviation Organization (ICAO), the United Nations Office for Outer Space Affairs (UNOOSA). Furthermore, Resolution **136** (Rev. Bucharest, 2022) of the Plenipotentiary Conference underscores the important role of telecommunications and information technologies in monitoring, early warning, prevention and mitigation of emergency and disaster situations.

In carrying out the studies under WRC-27 agenda item **1.17**, it is important to recognize that while space weather data products are used for forecasts and warnings related to public safety, the provisions of No. **1.59** and **4.10** do not apply. Additionally, it is important to recognize that the current provisions of Article **11** do not allow an administration to notify a frequency assignment to a receive-only terrestrial radio station, except for certain types of station (see **11.2**, **11.9** and **11.12**). Therefore, the procedure for notifying receive-only MetAids (space weather) stations currently does not exist. Furthermore, some receive-only space weather sensors in operation utilize bands not currently allocated to the MetAids service, and some of these sensors need to continue their current operation. Lastly, the studies under this agenda item consider receive-only space weather sensors with the understanding that they will be deployed only at a limited number of specific locations and not in a ubiquitous manner.

Report ITU-R RS.2456 provides information on radio spectrum-reliant sensors and systems that are operating in support of space weather monitoring, prediction and warnings. Additionally, there are ongoing efforts within ITU-R to determine the spectrum requirements and protection criteria of receive-only space weather sensors.

As stated in Resolution **682 (WRC-23)**, any new allocations to MetAids (space weather) shall not claim protection from, or constrain the future development of, incumbent services in the frequency bands considered in the Resolution, or in adjacent bands. For the 608 – 614 MHz band, there are a number of allocations, among those include the broadcasting service on a primary basis in Regions 1 and 3 and in the adjacent bands in Region 2. Further, this band is also allocated to the mobile service on a primary basis in Region 3 and on a secondary basis in Europe. In the adjacent bands, among other allocations, the mobile service is allocated on a primary basis, including IMT identifications in several countries in the ASMG, CITEL and APT regions. The adoption of IMT in these regions is expected to grow in the future, providing wide-area wireless broadband coverage.

U.S. VIEW:

The United States recognizes that space weather phenomena pose a significant threat to ground-based and space-based critical infrastructure, modern technological systems, and humans working in space. The United States supports the consideration of new primary allocations to MetAids (space weather) in the six specified frequency bands and the associated regulatory provisions for ground-based, receive-only space weather sensors in the Radio Regulations, taking into account the results of the studies under Resolution **682 (WRC-23)**. Any allocations to MetAids (space weather) made at WRC-27 shall not claim protection from or constrain the future development of incumbent services in the specified frequency bands or in adjacent bands.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.18: to consider, based on the results of ITU Radiocommunication Sector studies, possible regulatory measures regarding the protection of the Earth exploration-satellite service (passive) and the radio astronomy service in certain frequency bands above 76 GHz from unwanted emissions of active services, in accordance with Resolution **712 (WRC-23)**.

ISSUE: The Earth exploration satellite service (EESS) (passive) and radio astronomy service (RAS) are highly susceptible to unwanted emissions from active radio services operating in adjacent frequency bands. The current regulatory provisions and procedures may require review to ensure protection of the EESS (passive) and the RAS in certain frequency bands above 76 GHz from unwanted emissions of certain active services.

BACKGROUND:

The WRC-2000 made various allocation changes to the frequency bands above 71 GHz, including primary allocations to the Earth exploration-satellite service (EESS) (passive) subject to No. 5.340, based on the requirements known at the time of that conference. Primary allocations have also been made to various active services in frequency bands adjacent to frequency bands above 86 GHz allocated to the EESS (passive) subject to No. 5.340. While some active systems are under development, in many of the bands above 76 GHz the planned use is still in a nascent state. As noted in Resolution **731**, the sharing criteria for active and passive services in the frequency bands above 71 GHz have not been fully developed within the ITU and that to the extent practicable, the burden of sharing among active and passive services should be equitably distributed among the services to which allocations are made. Additionally, primary service allocations have been made in adjacent frequency bands to the radio astronomy service (RAS) and various space services, such as the fixed-satellite service (FSS), mobile-satellite service (MSS), broadcasting-satellite service (BSS), and radionavigation-satellite service (RNSS), in frequency bands above 76 GHz. In many cases, because the frequencies used by EESS (passive) sensors and stations of the RAS are chosen to study natural phenomena producing radio emissions at frequencies fixed by the laws of nature, it is not possible for EESS (passive) or RAS stations to shift frequencies to avoid or mitigate interference problems.

Resolution **750 (Rev. WRC-19)** and Resolution **739 (Rev. WRC-19)** contain unwanted emission limits applied to the active services to ensure protection of the EESS (passive) and RAS, respectively.

Resolution **712 (WRC-23)** called for compatibility studies between the EESS (passive) and corresponding active services listed in Table 1 below, and between the RAS and the active satellite services in the adjacent bands listed in Table 2 below (with a view to setting the relevant threshold levels for unwanted emissions from any GSO and non-GSO space stations and revising and updating Resolution **739 (Rev.WRC-19)** accordingly).

TABLE 1

EESS (passive) frequency bands to be studied and corresponding active services to be included

EESS (passive) frequency band	Active service frequency band	Active service
86-92 GHz	81-86 GHz	Fixed-satellite service (FSS) (Earth-to-space), mobile service (MS)

	92-94 GHz	MS, radiolocation service (RLS)
114.25-116 GHz	111.8-114.25 GHz	Fixed service (FS), MS
164-167 GHz	158.5-164 GHz	FS, FSS (space-to-Earth), MS, mobile-satellite service (MSS) (space-to-Earth)
	167-174.5 GHz	FS, FSS (space-to-Earth), inter-satellite service (ISS), MS
200-209 GHz	191.8-200 GHz	FS, ISS, MS, MSS, radionavigation service (RNS), radionavigation-satellite service (RNSS)
	209-217 GHz	FS, FSS (Earth-to-space), MS

TABLE 2

RAS frequency bands to be studied and corresponding active services to be included

Radio astronomy frequency band	Active satellite service frequency band	Active satellite service (space-to-Earth)
76-81 GHz	71-76 GHz	Fixed-satellite service (FSS), mobile-satellite service (MSS), broadcasting-satellite service (BSS)
130-134 GHz	123-130 GHz	FSS, MSS, radionavigation-satellite service (RNSS)
164-167 GHz	167-174.5 GHz	FSS
226-231.5 GHz	232-235 GHz	FSS

Resolution **712 (WRC-23)** also invited WRC-27 to determine, based on study results, any regulatory measures regarding the protection of the EESS (passive) in the frequency bands listed in Table 1 above from unwanted emissions of active services and update Resolution **750 (Rev.WRC-19)** accordingly, and to determine, based on the results of studies, any required regulatory measures regarding the protection of the RAS in the frequency bands listed in Table 2 above and update Resolution **739 (Rev.WRC-19)** accordingly.

U.S. VIEW:

The United States supports conducting the compatibility studies, based on available characteristics of the active services, called for in Resolution **712 (WRC-23)**, between the EESS (passive) and the corresponding active services in adjacent frequency bands as listed in Table 1. Further, the United States supports conducting the compatibility studies between the RAS and the active satellite services in frequency bands listed in Table 2.

The U.S. also supports, based on ITU-R study results, potential development of recommended regulatory measures to ensure compatibility of the EESS (passive) / RAS without overly burdening the current and future use of active services in the studied frequency bands. These studies should take into account Resolution 731 and the principle of burden sharing between passive and active services.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS FOR WRC-27

Agenda Item 1.19: to consider possible primary allocations in all Regions to the Earth exploration-satellite service (passive) in the frequency bands 4 200-4 400 MHz and 8 400-8 500 MHz, in accordance with Resolution **674 (WRC-23)**.

BACKGROUND:

For years, the frequency band 6 425 – 7250 MHz has been utilized by opportunistic use (i.e. no allocation) of the Earth exploration-satellite service (EESS) (passive) for operations carried out over oceans (see No. **5.458**). EESS passive sensing may also be authorized in the frequency band 4 200-4 400 MHz on a secondary basis (see Radio Regulation (RR) No. **5.437**).

In accordance with Resolution **674 (WRC-23)**, WRC-27 agenda item 1.19 invites studies on the use of the EESS (passive) to perform sea surface temperature (SST) measurements for detecting and forecasting meteorological events in the complementary frequency bands 4 200-4 400 MHz and 8 400-8 500 MHz. SST, together with ocean salinity, is one of the drivers of the ocean circulation, which is key for any numerical weather prediction (NWP) or numerical ocean prediction (NOP) models. SST is also a critical variable for climatological studies and for the assessment of global temperature trends, and it is fundamental to understand the exchanges of heat, gas and momentum between the atmosphere and the ocean, and in calculations of carbon uptake by the ocean from the atmosphere. Global maps of SST are also important for commercial applications such as fishery assessment.

The frequency bands 4 200-4 400 MHz and 8 400-8 500 MHz, as well as adjacent bands, are utilized by several active radiocommunication services. The frequency band 4 200-4 400 MHz is allocated to the primary aeronautical mobile (Route) service (AM(R)S) for use of wireless avionics intra-communication systems (WAIC) under RR No. **5.436**, and to the primary aeronautical radionavigation service (ARNS) for use of radio altimeters onboard aircraft and associated transponders on ground under RR No. **5.438**. In the adjacent band 3 600-4 200 MHz, the mobile service is allocated on a primary basis in Regions 2 and 3, and a secondary basis in Region 1, and is currently being operated or under study for mobile broadband use in many countries. Furthermore, the frequency bands 3 600-4 200 MHz and 4 500-4 800 MHz are allocated to fixed satellite services (space-to-Earth), for use by satellites beams with full or partial ocean overlap. The frequency band 7 900-8 400 MHz is allocated on a primary basis to fixed, mobile, and fixed-satellite service (Earth-to-space). Noting the sensitivity of the EESS receivers taking temperature measurements of the sea surface, any allocation to the EESS (passive) under this agenda item cannot claim protection from existing services in these frequency bands, or adjacent bands, per Resolution **674 (WRC-23)**.

It is worth noting that WRC-23 deliberated on aspects of several agenda items pertaining to EESS passive systems seeking protection from active services operating in adjacent bands. The source of interference was mentioned as emissions from active systems reflected from the sea surface in all of these scenarios. Studies were conducted showing this interference causes EESS passive measurements to be corrupted and the collected data to be unusable.

It should also be noted that WRC-27 agenda item 1.19 considers frequency bands that are adjacent to those under consideration of WRC-27 agenda item 1.7, based on studies of the technical, operational and regulatory issues pertaining to the possible use of the terrestrial component of IMT. Agenda item 1.19 studies should take into account the potential impact of IMT systems being studied under agenda item 1.7 in the adjacent frequency bands, noting any use of EESS (passive) could not claim protection from the use of the mobile service (including IMT) operating in the adjacent bands.

U.S. VIEW:

The United States supports conducting the sharing and compatibility studies called for in Resolution **674 (WRC-23)**. Given the current and planned use of active service systems operating in, and adjacent to, the frequency bands 4 200-4 400 MHz (e.g. aeronautical mobile (R), aeronautical radionavigation, fixed, fixed-satellite and mobile) and 8 400-8 500 MHz, first, the technical viability and overall practicality of designating new primary allocations for EESS (passive) service within the specified frequency bands needs to be ascertained. Second, any allocation to the EESS (passive) under this agenda item should not claim protection from current and future applications of the incumbent services, both in-band and adjacent. Finally, studies should take into account, without claiming protection, the possible impact of studies under WRC-27 agenda item 1.7 concerning the potential identification of the adjacent frequency band 8 215-8 400 MHz for IMT systems.

Attachment B



**UNITED STATES DEPARTMENT OF
COMMERCE**
**National
Telecommunications and
Information
Administration**
Washington, D.C. 20230

Ms. Nese Guendelsberger
Deputy Chief, Office of International Affairs
Federal Communications
Commission 45 L Street NE
Washington, DC 20554

Dear Ms. Guendelsberger:

The National Telecommunications and Information Administration (NTIA), on behalf of the Executive Branch agencies, provides the attached WRC-27 preliminary views for Agenda Items 1.2 addressing smaller antenna sizes for FSS uplinks at 14 GHz, 1.9 addressing Appendix 26 aeronautical HF modernization, 1.13 addressing new allocations to MSS for IMT, 1.15 addressing Lunar Comms, and 1.16 addressing Radio Quiet Zones.

NTIA looks forward to working with FCC in reconciling these preliminary views for submission to CITEL PCC II as U.S. views. Our point of contact is Mr. Charles Glass, NTIA's WRC Coordinator, who can be reached at (202) 714-1763 or cglass@ntia.gov.

Sincerely,

Derek Khoplin July 11, 2024

Derek Khlopin
Deputy Associate Administrator
Office of Spectrum Management

Enclosures (x)

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.2: to consider possible revisions of sharing conditions in the frequency band 13.75-14 GHz to allow the use of uplink fixed-satellite service earth stations with smaller antenna sizes, in accordance with Resolution 129 (WRC-23).

ISSUE:

The utilization of smaller antenna sizes for uplink geostationary orbit (GSO) and non-GSO (NGSO) fixed satellite service (FSS) earth stations in the frequency band 13.75-14 GHz requires thorough technical and operational studies to support potential regulatory changes while ensuring the continued protection of the radiolocation service (RLS) and space research service (SRS), as addressed in Nos. 5.502 and 5.503 of the ITU Radio Regulations (RR).

BACKGROUND:

The frequency band 13.75-14 GHz has been subject to regulatory and allocation changes over the years, reflecting the evolving needs of the satellite communication sector. WARC-92 added an allocation, further revised by WRC-03, to the FSS (Earth-to-space) in this band and described sharing conditions with RLS in Nos 5.502 and for SRS in 5.503. WRC-03 introduced changes to Nos. 5.502 and 5.503 that made it possible to use earth station antennas as small as 1.2 meters for the GSO FSS networks. For GSO earth station antennas in the range of 1.2 to 4.5 meters, the power flux-density (pfd) and equivalent isotopically radiated power (e.i.r.p.) density are limited. WRC-03 did not introduce any changes in Nos. 5.502 and 5.503 regarding earth station antennas for NGSO systems.

WRC-23 again identified the need for further studies to address the operational and technical limitations regarding the minimum antenna size and associated power limitations for GSO and NGSO FSS earth stations in the 13.75-14 GHz band. Resolution 129 (WRC-23) acknowledges the increasing demand for uplink spectrum by smaller antennas for earth stations and the necessity to review sharing conditions with the RLS and SRS to support the evolving needs of FSS applications efficiently and rationally.

U.S. VIEW:

The United States is of the view that any possible revisions of sharing conditions in the 13.75-14 GHz band to accommodate smaller antenna sizes for uplink FSS earth stations must ensure protection for existing services, particularly RLS and SRS, and shall not impose any additional constraints on these services.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.9: to consider appropriate regulatory actions to update Appendix 26 to the Radio Regulations in support of aeronautical mobile (OR) high frequency modernization, in accordance with Resolution 411 (WRC-23);

ISSUE:

The High Frequency (HF) band has been identified as an effective alternative to provide much needed integrated and interoperable Beyond-Line-of-Sight (BLOS) communications capabilities. HF is also a critical and affordable option for global broadcasting and amateur radio, and an alternative when other communications services are unavailable due to natural disasters or other national emergencies. Commercial financial institutions are exploring the use of HF long-distance delivery for financial users requiring low latency data. The challenge with meeting the growing requirement for modern HF is the need for the increased bandwidth allocations that would be required to achieve HF's advantages while not impeding the legacy frequency needs of incumbent users, groups, or countries.

There are modern wide band HF (WBHF) technologies available that enable the flexibility to use wider channel bandwidths within advanced digital HF and enhanced applications that can support a shared environment while also maximizing spectrum efficiency. Current wideband technology and methodologies are available that automate the negotiating of the Radio Frequency (RF) environment while mitigating any harmful interference to users in, or adjacent to, a desired HF frequency range.

Appendix 26 of the ITU Radio Regulations limits Aeronautical Mobile (OR) to a maximum bandwidth of 2.8 kHz.

BACKGROUND:

WRC-23 through Resolution 411 (WRC-23) resolves to invite the Radiocommunication Sector to review Appendix 26 of the Radio Regulations and consider necessary changes, as appropriate, to Appendix 26, on the basis of studies without modifying the existing area allotments, and while taking into account that the current use of the narrowband systems shall remain unchanged and shall not be impacted nor precluded by the revision of Appendix 26.

U.S. VIEW:

The U.S. supports updating Appendix 26 of the Radio Regulations in the following bands allocated to AM(OR)S as long as sharing studies show the ability of HF wideband systems to ensure compatibility with incumbent and adjacent allocations:

- 3025 – 3155 kHz
- 3900 – 3950 kHz
- 4700 – 4750 kHz
- 5680 – 5730 kHz
- 6685 – 6765 kHz
- 8965 – 9040 kHz
- 11175 – 11275 kHz
- 13200 – 13260 kHz
- 15010 – 15100 kHz

- 17970 – 18030 kHz

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.13: to consider studies on possible new allocations to the mobile-satellite service for direct connectivity between space stations and International Mobile Telecommunications (IMT) user equipment to complement terrestrial IMT network coverage, in accordance with Resolution **253 (WRC-23)**;

ISSUE: ITU-R will study possible allocations to the MSS in the frequency range between 694/698 MHz and 2.7 GHz, taking into account the IMT frequency arrangements addressed in the most recent version of Recommendation ITU-R M.1036;

In addition, ITU-R will:

- Perform studies on spectrum requirements and on technical, operational and regulatory matters related to the implementation of the mobile-satellite service for direct connectivity to the IMT user equipment to complement the terrestrial IMT network coverage.
- Conduct studies on sharing and compatibility between incumbent services, including in adjacent frequency bands, ensuring the protection of incumbent services in accordance with the Radio Regulations.
- Study possible technical and operational measures to ensure that the stations in the MSS do not cause harmful interference to, or claim protection from, stations operating in the mobile service.

BACKGROUND:

U.S. did not submit a Future Agenda Item proposal to WRC-23 on this item. The U.S. was not a signatory to the CITEL IAP, which listed specific bands (listed below) all within the overall range of Resolution **253 (WRC-23)**:

- 694-960 MHz;
- 1 710-2 025 MHz;
- 2 110-2 200 MHz;
- 2 300-2 400 MHz;
- 2 500-2 690 MHz

The U.S. would like to clarify that the required sharing and compatibility studies include terrestrial, space, and other non-terrestrial services operating in the bands and in adjacent bands. Further, while the proposed new MSS stations would be effectively secondary to stations operating in the mobile service, that should not be seen to imply that other systems with primary allocations or those in operation as a secondary service should not be protected.

The U.S. is aware of advances in technology allowing direct connections between user handsets and satellites as a supplemental means to communicate when terrestrial IMT network coverage is not available.

In the possible case of co-frequency terrestrial IMT and MSS operation, where the MSS is complementing terrestrial IMT network coverage, the U.S. considers it important that the operators of IMT system be responsible for the use of the co-frequency terrestrial and satellite spectrum resources.

The U.S. interprets the intent of Resolution **253 (WRC-23)** (particularly, but not exclusively, *considering c, noting f, recognizing d, and the resolves and further resolves*) to limit the studies within the frequency range 694/698 – 2 700 MHz to bands already allocated by the ITU to the mobile service and identified by footnote for IMT. The ITU-R Radio Regulations and Recommendations provide instruction and/or guidance as to which bands within the frequency range are appropriate for new MSS allocations and thus should be studied; they also provide instruction and/or guidance as to which bands within the frequency range are not appropriate for new MSS allocations and thus should not be studied.

The U.S. has national rules that provide further constraints and/or guidance as to which bands should be studied, or which bands should not be studied. A final criterion for which bands should be studied is an examination of the specific use of the bands, and eliminating those where the U.S. use appears to present technical challenges to sharing by the proposed new MSS. As part of this, the US does not support direct connectivity between space stations and International Mobile Telecommunications (IMT) user equipment to complement terrestrial IMT network coverage in frequency bands above 2000MHz.

Thus, the U.S. Preliminary View of which bands should be studied for WRC-27 Agenda Item 1.13 is a sub-set of the bands in the frequency range 694/698 – 2 700 MHz already allocated by the ITU to the mobile service and identified by footnote for IMT, with further considerations. The specific bands are listed in the U.S. View section. For reference, the Annex contains a list of bands which the U.S. believes should not be studied.

U.S. VIEW:

The U.S. view is that WRC-27 Agenda Item 1.13 shall only study bands already allocated to the mobile service AND identified by footnote for IMT listed below.

694/698 - 902 MHz

902 - 908 MHz (R1 & R3 only; not R2)

908 - 960 MHz

1 710 - 1 755 MHz

1 850 - 2 000 MHz

These studies should take in-band and adjacent band issues into account, as well as harmonic impacts to bands allocated to the radio astronomy service (see *Recognizing f*).

The results of studies supporting Agenda Item 1.4 (WRC-23) showed sharing between HIBS operating in the 2 500-2 690 MHz frequency band and ARNS and Meteorological Radars operating in the 2 700 – 2 900 MHz frequency band may be feasible when considering a PFD limit. As such, studies conducted under AI 1.13 (WRC-27) should also determine a PFD limit sufficient to protect the incumbent services operating in the 2 700-2 900 MHz frequency band.

Proper considerations for incumbent services, including in adjacent frequency bands, should be studied under this agenda item. The U.S. supports that the stations in the MSS being considered under AI 1.13 (WRC-27) do not cause harmful interference to, or claim protection from, stations operating in the mobile service. Additionally, it is important to limit studies to bands already identified for IMT.

ANNEX

List of bands within the frequency range 694/698 - 2 700 MHz
which the U.S. believes should not be studied

Band (MHz)	Description
902-908	Not identified for IMT in R2 by ITU footnotes. (See RR No. 5.317A .)
960-1164	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Internationally standardized civil aviation systems in AM(R)S and ARNS safety services.
1164-1300	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Allocated to RNSS on a primary basis and used by GPS. Internationally standardized civil aviation systems in ARNS (inc'l RR No. 5.331) safety service and RNSS and RLS.
1300-1390	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Internationally standardized civil aviation systems in 1300-1370 MHz in ARNS safety service (inc'l RR No. 5.334).
1390-1395	Not identified for IMT by ITU footnotes; not in M.1036. Keeping this frequency range clear as much as possible remains of high importance to radio astronomy operations (see 1400-1427, below).

Band (MHz)	Description
1395-1400	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Keeping this frequency range clear as much as possible remains of high importance to radio astronomy operations (see 1400-1427, below; also note the need to study for harmonics impacts to the 2690-2700 MHz range, as specified in the AI 1.13 associated Resolution 253 (WRC-23)).
1400-1427	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Exclusive passive frequency band: • RR No. 5.340 "All emissions are prohibited in the following bands: 1 400-1 427 MHz, ... (WRC-03)" • US246 "No station shall be authorized to transmit in the following bands: ... 1400-1427 MHz, ..." Not identified for IMT by ITU footnotes; not in M.1036. This is THE fundamental/workhorse band for radio astronomy, as it contains the ubiquitous 21 cm neutral hydrogen line crucial for galactic and extragalactic structure/velocity detection. This band and that below it (due to doppler/redshift) are crucial for radio astronomy operation. In use by 10 stations of VLBA, the VLA, Green Bank Observatory, among many others in the U.S. and around the world (U.S. funded).
1427-1518	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. US uses this band for Aeronautical Mobile Telemetry. Immediately adjacent frequencies to the crucial 1400-1427 MHz range; may represent a significant out-of-band interference challenge for passive systems such as radio astronomy.
1518-1559	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. NOAA utilizes 1544-1545 MHz band for search and rescue satellite (SARSAT) downlink: • RR No. 5.356 "The use of the band 1544-1545 MHz by the mobile-satellite service (space-to-Earth) is limited to distress and safety communications" Internationally standardized civil aviation systems in MSS (space-to-Earth) with AMS(R)S access by footnotes, see Resolution 222 (Rev. WRC-23).

Band (MHz)	Description
1559-1610	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Allocated to RNSS on a primary basis and used by GPS. Internationally standardized civil aviation systems in ARNS safety services and RNSS and MSS.
1610-1670	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. US246 "No station shall be authorized to transmit in the following bands: ... 1660.5-1668.4 MHz, ..." Not identified for IMT by ITU footnotes; not in M.1036. Primary allocations in the 1610.6-1613.8 MHz and 1660.5-1670 MHz range represent a profound sharing challenge, particularly with space-to-Earth transmissions. Significant work completed in protecting the 1610.6-1613.8 MHz range as recognized in RR No. 5.372. In use by 10 stations of the VLBA, VLA, Green Bank Observatory. Internationally standardized civil aviation systems in 1610-1660.5 MHz in AMS(R)S safety services (inc'l Resolution 222 (Rev.WRC-23))
1670-1675	Not identified for IMT by ITU footnotes; not in M.1036.
1675-1710	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. US uses the 1675-1695 MHz band for significant satellite downlinks.
1755-1850	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Significant US operations including satellite uplinks in 1761-1842 MHz.
2000-2700	The utilization of S/X band (above 2 GHz) for critical radio observations to provide input data to the celestial reference frame which underpins the RNSS service is a U.S. priority.

Band (MHz)	Description
2025-2110	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes. Footnote to the title of §5 of M.1036: "The 2025-2110 MHz band is not part of the frequency arrangements" RR No. 5.391 "In making assignments to the mobile service in the frequency bands 2 025-2 110 MHz and 2 200-2 290 MHz, administrations shall not introduce high-density mobile systems, as described in Recommendation ITU-R SA.1154-0, and shall take that Recommendation into account for the introduction of any other type of mobile system. (WRC-15)" US utilizes 2025-2110 MHz band for command and satellite management uplinks; Critical band for US satellite operations.
2200-2290	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. RR No. 5.391 "In making assignments to the mobile service in the frequency bands 2 025-2 110 MHz and 2 200-2 290 MHz, administrations shall not introduce high-density mobile systems, as described in Recommendation ITU-R SA.1154-0, and shall take that Recommendation into account for the introduction of any other type of mobile system. (WRC-15)" US utilizes 2200-2290 MHz band for data acquisition and communications downlinks; Critical band to US satellite operations.
2290-2300	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036. Primary SRS deep space (s-E) in 2290-2300 MHz.
2360-2395	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. By RR No. 5.394, US uses this band for Aeronautical Mobile Telemetry.
2400-2417	Not identified for IMT by ITU footnotes; not in M.1036.
2417-2450	Not identified for IMT by ITU footnotes; not in M.1036.

Band (MHz)	Description
2450-2483.5	Not identified for IMT by ITU footnotes; not in M.1036.
2483.5-2500	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Not identified for IMT by ITU footnotes; not in M.1036.
2690-2700	FCC's SCS R&O 14Mar24 is not supported in bands with USG primary allocations. Exclusive passive frequency band: - RR No. 5.340 "All emissions are prohibited in the following bands: ... 2 690-2 700 MHz, except those provided for by No. 5.422, ... (WRC-03)" US246 "No station shall be authorized to transmit in the following bands: ... 2690-2700 MHz, ..." Not identified for IMT by ITU footnotes; not in M.1036. This band is used for continuum observations, including by the VLBA (10 stations), the VLA, and Green Bank Observatory, as well as geodetic VLBI measurements key to maintaining RNSS system accuracy.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.15: to consider studies on frequency-related matters, including possible new or modified space research service (space-to-space) allocations, for future development of communications on the lunar surface and between lunar orbit and the lunar surface, in accordance with Resolution **680 (WRC-23)**;

BACKGROUND:

WRC-27 AI 1.15 aims to address in-situ near-term scientific exploration and discovery objectives in time for decision by WRC-27, and to initiate studies to identify spectrum needs for future space activities beyond space research to enable cislunar long duration human presence to support consideration of other relevant radiocommunication services for actions by a future competent world radio conference beyond WRC-27.

In November 2022, the National Science & Technology Council released the National Cislunar Science and Technology Strategy outlining the strategy to advance the United States' scientific, exploration, and economic development activities in Cislunar space. This strategy also affirms the interagency efforts including the Artemis Accords and space related STEM-Education, the ITU Radio Regulations, and technology maturation efforts to pave ways for a long-term robust space economy.

In the United States, the near-term scientific exploration and discovery objectives are currently being undertaken by NASA in collaboration with US industry partners and numerous space agencies around the world under the Artemis Program. In addition, a series of precursor commercial lander programs are being carried out to conduct technology demonstrations and survey the lunar environment in preparation for a return of humans to the Moon in the next several years, working toward achieving a sustainable and robust presence on the Moon in the next decade. Technical studies identified that additional space research service spectrum is required to enable the implementation of advance wireless technologies for lunar surface direct communications between landers, rovers, extravehicular activity (EVA) astronauts conducting sortie missions and to return data from unique scientific experiments for relay back to Earth. Resolution **680 (WRC-23)** *resolves to invite the ITU Radiocommunication Sector to complete in time for the 2027 world radiocommunication conference 1 to 5* provide the specific framework and scope for which to meet the in-situ near-term scientific mission objectives.

Consistent with the November 2022 National Cislunar Science and Technology Strategy to advance the scientific, exploration, and economic development activities in Cislunar space, AI 1.15 (WRC-27), to obtain new (or modified) Space Research Service (SRS) allocations, aims to promote efficient, sustainable, and responsible applications of advanced wireless communications, navigation and scientific research techniques in the near-term Artemis Program missions, with global governmental, industry and academia participation.

The scientific discoveries and technological advancements resulting from the near-term space exploration objective is anticipated to further promote new industries and technologies and accelerate space commerce. Resolution **680 (WRC-23)** invites ITU-R to begin studies and provide a progress report through the

Director of the BR to WRC-27 regarding future radiocommunications needs for activities in the lunar vicinity beyond space research considering existing space radiocommunication services and regulatory provisions.

US VIEW:

The US supports new or modified SRS allocations for lunar surface and lunar orbit-to-surface applications, taking into account provisions to protect the unique environment of the Shielded Zone of the Moon for radioastronomical measurements ensuring compatibility with incumbent services in frequency bands where planned lunar SRS systems will operate.

Looking beyond the immediate scientific exploration objectives, the United States will contribute studies and inputs to guide the development of a report, on the future radiocommunications needs for activities in the lunar vicinity beyond space research per Resolution **680 (WRC-23)**, to support of the BR Director's progress report to the WRC-27. This progress report and its final outcomes are intended to inform technical and regulatory decisions at a future competent world radio conference beyond WRC-27.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.16: to consider studies on the technical and regulatory provisions necessary to protect radio astronomy operating in specific Radio Quiet Zones and, in frequency bands allocated to the radio astronomy service on a primary basis globally, from aggregate radio-frequency interference caused by non-geostationary-satellite orbit systems, in accordance with Resolution **681 (WRC-23)**;

ISSUE: Resolution **681 (WRC-23)** calls for studies in several categories, including 1) studies on impacts to radio astronomy service (RAS) systems from satellite systems in specific bands globally, with possible regulatory outcomes, 2) technical studies into more general impacts to RAS systems from satellite systems, including harmonics and aggregate effects, and 3) studies of impacts from satellite systems on nationally-defined radio quiet zones, specifically the Atacama Plateau in Chile and the area around the Square Kilometre Array Observatory in South Africa.

BACKGROUND: As the prevalence of both non-geostationary satellite (nGSO) networks and the number of satellites per network have increased, impacts to RAS systems have likewise become more acute. Where RAS observatories were previously able to largely avoid transmissions from satellites in GSO systems by waiting for the astronomical target of interest to move to another part of the sky away from the “Clarke” belt, doing so has become highly challenging due to new nGSO systems, band occupancy, increased numbers of satellites in nGSO systems, and the aggregation of signals that by themselves may not be problematic.

Some administrations, under national sovereignty principles, have created geographic zones set aside where spectrum-use regulations apply which are different than those applicable elsewhere. Such zones may be designed to allow research and development, scientific investigation (consistent with e.g. RR **29.6**) and other purposes. However, such zones typically cannot by themselves provide sufficient protection from satellite transmissions limited only by current PFD level specifications in the Radio Regulations. Some of these zones when in proximity to national borders may face additional challenges to provide sufficient protections from satellite transmissions.

Resolution **681 (WRC-23)** includes studies toward possible regulatory measures regarding unwanted emissions into defined radio astronomy bands, taking into account both single and multiple non-GSO satellite systems (*resolves to invite the ITU Radiocommunication Sector 1 and 2*), and studies regarding solutions to characterize and possible recognition of two specific radio quiet zones in South Africa and Chile, based upon the characteristics of those zones (*resolves to invite the ITU Radiocommunication Sector 3-6*). To that end and to complete the specified studies, both satellite system characteristics with regard to the bands stated in the Resolution, and satellite system characteristics relevant to the two specific radio quiet zones in question are needed.

The United States has an interest in the effective functioning of the radio quiet zone in Chile as it has invested hundreds of millions of dollars in the Atacama Large Millimeter/Submillimeter Array (ALMA) in the Atacama Desert of Chile. The United States is a global leader in satellite-radio astronomy coexistence, with regulatory coordination requirements which have led to voluntary technical solutions. The United States has longstanding experience with its National Radio Quiet Zone with practical solutions that may be relevant for the specific two radio quiet zones.

U.S. VIEW:

The United States supports the development of reports and appropriate studies under this agenda item, and provision within these reports of relevant data toward developing compatibility recommendations for enabling both successful RAS and satellite service missions. These studies should clearly and separately address (1) radio astronomy allocations which are applicable globally, (2) impact of harmonics or out of band emissions in aggregate, and (3) the two specific radio quiet zones over a broader frequency range relevant to the observatories operating in those zones.



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

Ms. Nese Guendelsberger
Deputy Chief, Office of International Affairs
Federal Communications
Commission 45 L Street NE
Washington, DC 20554

Dear Ms. Guendelsberger:

The National Telecommunications and Information Administration (NTIA), on behalf of the Executive Branch agencies, provides the attached WRC-27 preliminary views for Agenda Items 1.17 addressing Space Weather, 1.18 addressing Protection of EESS and RAS above 76 GHz, and 1.19 addressing Primary EESS in 4 and 8 GHz.

NTIA looks forward to working with the FCC in reconciling these preliminary views for submission to CITEL PCC II as U.S. views. Our point of contact is Mr. Charles Glass, NTIA's WRC Coordinator, who can be reached at (202) 714-1763 or cglass@ntia.gov.

Sincerely,

Derek Khlopin
Deputy Associate Administrator
Office of Spectrum Management

Enclosures (3)

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.17: to consider regulatory provisions for receive-only space weather sensors and their protection in the Radio Regulations, taking into account the results of ITU Radiocommunication Sector studies, in accordance with Resolution **682 (WRC23)**;

ISSUE:

Space weather events can cause harm to important sectors of national economies, security and human welfare. As such, space weather data is important, and regulatory protection is needed for space weather observation systems, including receive-only sensors that measure low-level emissions from sources such as the Sun, the Earth's atmosphere and other celestial bodies. Resolution 675 (WRC-23) defines space weather and designates space weather sensors to the meteorological aids service. However, no frequency bands have been documented in any manner in the Radio Regulations for space weather sensor applications.

Resolution 682 (WRC-23) calls for studies on system characteristics, spectrum needs, and appropriate protection criteria for receive-only space weather sensors. Additionally, it calls for sharing and compatibility studies of receive-only sensors for potential new primary allocations to MetAids (space weather) in six specific frequency bands (27.5-28.0 MHz, 29.7-30.2 MHz, 32.2-32.6 MHz, 37.5-38.325 MHz, 73.0-74.6 MHz and 608-614 MHz) without claiming protection from, or constraining the future development of, incumbent services in these or adjacent frequency bands. Lastly, it calls for studies on possible regulatory provisions to accommodate the notifications of receive-only space weather sensor stations for inclusion in the Master International Frequency Register (MIFR), stipulating that no such notifications may be made until WRC-27 introduces the corresponding allocations in Article 5.

BACKGROUND:

The importance of space weather radiocommunication applications has been emphasized by several international bodies, including the World Meteorological Organization (WMO), the Intergovernmental Panel on Climate Change (IPCC), the United Nations Office for Disaster Risk Reduction (UNDRR), the International Civil Aviation Organization (ICAO), the United Nations Office for Outer Space Affairs (UNOOSA). Furthermore, Resolution 136 (Rev. Bucharest, 2022) of the Plenipotentiary Conference underscores the important role of telecommunications and information technologies in monitoring, early warning, prevention and mitigation of emergency and disaster situations.

In carrying out the studies under WRC-27 agenda item 1.17, it is important to recognize that while space weather data products are used for forecasts and warnings related to public safety, the provisions of No. 1.59 and 4.10 do not apply. Additionally, it is important to recognize that the current provisions of Article 11 do not allow an administration to notify a frequency assignment to a receive-only terrestrial radio station, except for certain types of station (see 11.2, 11.9 and 11.12). Therefore, the procedure for notifying receive-only MetAids (space weather) stations currently does not exist. Furthermore, some receive-only space weather sensors in operation utilize bands not currently allocated to the MetAids service, and some of these sensors need to continue their current operation. Lastly, the studies under this agenda item consider receive-only space weather sensors with the understanding that they will be deployed only at a limited number of specific locations and not in a ubiquitous manner.

Report ITU-R RS.2456 provides information on radio spectrum-reliant sensors and systems that are operating in support of space weather monitoring, prediction and warnings. Additionally, there are

ongoing efforts within ITU-R to determine the spectrum requirements and protection criteria of receive-only space weather sensors.

U.S. VIEW:

The United States finds that space weather phenomena pose a significant threat to ground-based and space-based critical infrastructure, modern technological systems, and humans working in space. The United States supports the consideration of regulatory provisions for receive-only space weather sensors and their protection in the Radio Regulations, taking into account the results of the studies under Resolution 682 (WRC-23).

The United States plans to participate actively in the studies on spectrum needs, system characteristics, and appropriate protection criteria, taking into account the definition of space weather and the designation of space weather sensors to MetAids (space weather) as provided in Resolution 675 (WRC-23). Additionally, the United States plans to participate actively in the studies on sharing and compatibility for potential new primary allocations to MetAids (space weather) in the six specified frequency bands, without claiming protection from or constraining the future development of incumbent services in the specified frequency bands or in adjacent bands. Furthermore, the United States plans to participate actively in the studies on possible regulatory provisions of the Radio Regulations to accommodate the notifications of receive-only space weather sensor stations for inclusion in the MIFR, while not allowing such notifications until WRC-27 introduces the corresponding allocations in Article 5.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.18: *to consider, based on the results of ITU Radiocommunication Sector studies, possible regulatory measures regarding the protection of the Earth exploration-satellite service (passive) and the radio astronomy service in certain frequency bands above 76 GHz from unwanted emissions of active services, in accordance with Resolution 712 (WRC-23);*

ISSUE: The Earth exploration satellite service (EESS) (passive) and radio astronomy service (RAS) are highly susceptible to unwanted emissions from active radio services operating in adjacent frequency bands. The current regulatory provisions and procedures may require review to ensure protection of the EESS (passive) and the RAS in certain frequency bands above 76 GHz from unwanted emissions of certain active services.

BACKGROUND:

Resolution 750 (Rev. WRC-19) and Resolution 739 (Rev. WRC-19) contain unwanted emission limits applied to the active services to ensure protection of the EESS (passive) and RAS, respectively.

Resolution 750 (Rev. WRC-19) does not address the active services in frequency ranges above 76 GHz that are subject to study under agenda item 1.18. Active services are beginning system development and extensive global deployment in frequency bands above 76 GHz that are adjacent to EESS (passive) frequency bands subject to No. 5.340.

Likewise, Resolution 739 (Rev. WRC-19) does not currently address unwanted satellite service pfd thresholds in the RAS bands above 76 GHz subject to study under agenda item 1.18. These bands are in significant use at radio astronomy facilities around the world and are of key importance for scientific investigation. As active satellite services deploy in bands above 76 GHz, the need to address the adjacent- and near-adjacent-band issues identified in Resolution 712 (WRC-23) has become urgent.

U.S. VIEW:

Based on ITU-R study results, the US supports revision of Resolution 750 (Rev. WRC-19) and 739 (Rev. WRC-19) for the protection of certain RAS and EESS (passive) bands above 76 GHz.

UNITED STATES OF AMERICA
DRAFT PRELIMINARY VIEWS ON WRC-27

AGENDA ITEM 1.19: To consider possible primary allocations in all Regions to the Earth exploration-satellite service (passive) in the frequency bands 4 200-4 400 MHz and 8 400-8 500 MHz, in accordance with Resolution 674 (WRC-23).

ISSUE:

Resolution 674 (WRC-23) notes that, due to the sensitivity of the brightness temperature of the sea surface regarding frequency, it is appropriate to perform sea surface temperature (SST) measurements within the range of 4-9 GHz. Studies under WRC-27 AI 1.19 will examine a new primary allocation in all Regions to the EESS (passive) in the bands 4 200-4 400 MHz and 8 400-8 500 MHz, without in-band and adjacent band protection from existing services. The frequency bands 4 200-4 400 MHz and 8 400-8 500 MHz complement existing SST measurements by EESS (passive) in the frequency band 6 425-7 250 MHz and may ensure the continuity of SST measurements.

BACKGROUND:

Under RR No. 5.458, passive microwave sensor measurements are carried out over the oceans in the frequency band 6 425-7 075 MHz, and passive microwave sensor measurements are carried out in the band 7 075-7 250 MHz. Additionally, the footnote states that administrations should consider the needs of the Earth exploration-satellite (passive) services in their future planning of the bands 6 425-7 075 MHz and 7 075-7 250 MHz.

The 6 – 7 GHz frequency band, which is currently the most sensitive in measuring SST in most temperature ranges, may be impacted. Future high-density deployments of communication systems may impact SST measurements presently performed in this range. The analysis is based on the Working Document towards a Preliminary Draft New Report ITU-R RS.[EESS(PASSIVE)6-7 GHz] (Annex 7 to Document 7C/41) and indicates that potential IMT deployments in this frequency range will severely impact SST measurement data between 6-7 GHz. The interference levels into the passive sensor exceeded the interference criteria defined in Recommendation ITU-R RS.2017 by 70-80 dB. Therefore, primary frequency allocations to EESS (passive) are necessary and urgent to ensure the continuity of SST measurements in the future. Resolution 674 (WRC-23) noted that frequency bands for future SST measurements include 4 200-4 400 MHz and 8 400-8 500 MHz.

The Working Document towards a Preliminary Draft New Report ITU-R RS.[SST Measurements], as contained in Annex 8 to Document 7C/41, is a pivotal resource in the studies under WRC-27 AI 1.19. It provides a structured approach to assess possible long-term solutions for obtaining SST measurements. The document considers the compatibility and sharing between potential EESS (passive) use in the bands 4 200-4 400 MHz and 8 400-8 500 MHz and services allocated to these bands on a primary basis. Its content and structure are meticulously designed to facilitate these studies and ensure a comprehensive and systematic approach to the issue, further enhancing the reliability of the proposed solutions.

The 4 200-4 400 MHz frequency band is allocated to the Aeronautical Mobile (Route) Service (AM(R)S) and Aeronautical Radionavigation Service (ARNS), specifically for the global operation of radio altimeters (i.e., Regions 1, 2, and 3). The adjacent frequency band, 3 700-4 200 MHz, has primary allocations to the Fixed service (FS) and Fixed Satellite Service (FSS) (space-to-Earth) globally. Regions 2 and 3 also allocate it to mobile services (except aeronautical mobile). The 4 400-4 500 MHz frequency band is allocated to the FS and Mobile service (MS), including both Aeronautical Mobile Service (AMS) and Maritime Mobile Service (MMS) for all three Regions. Recommendation ITU-R RS.1624 concludes

passive sensors can share the band 4 200-4 400 MHz with radio altimeters operating in the ARNS with no need for protection from the altimeters.

The 8 400-8 500 MHz frequency band is allocated for the FS, MS (except aeronautical mobile), and Space Research Service (SRS) (space-to-Earth) in all three Regions. The 8 250-8 400 MHz frequency band is allocated to EESS (space-to-Earth), FSS (Earth-to-space), FS, and MS in all three Regions. The upper adjacent band, 8 500-8 550 MHz, is allocated to the Radiolocation service in all three Regions.

U.S. VIEW:

The need for additional spectrum to complement current SST measurements is evident as the 6 425-7 250 MHz band is not allocated to EESS (passive). A primary EESS (passive) allocation would never cause harmful interference to other radiocommunications services, due to the absence of emissions from space stations operating in a passive service. Studies are required under WRC-27 AI 1.19 to determine whether the proposed EESS (passive) allocations are usable in the presence of the interference environment created by incumbent services given the fact that imposing any constraints on the use of the existing services between 4 200-4 400 MHz and 8 400-8 500 MHz, as well as in adjacent bands, is not permitted under Res. 674 (WRC-23). These primary frequency allocations will significantly enhance the continuity and accuracy of SST measurements, benefiting various sectors and industries that rely on this data, including global weather forecasts used to help optimize aviation and maritime safety and fuel consumption.



Federal Communications Commission
Washington, D.C. 20554

August 6, 2024

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In Reply Refer to:
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In re: DKASA(AM), Phoenix, Arizona
Facility ID No. 33451
Application File Nos. 0000240830, 0000243193

DK294CW, Phoenix, Arizona
Facility ID No. 148238
Application File No. 0000243593
Pleading File No. 0000233497

**Petition for Reconsideration
Request for Special Temporary Authority
Informal Objection**

Dear Counsel:

The Media Bureau (Bureau) has under consideration several pleadings from KASA Radio Hogar (KRH) and Entravision Holdings, LLC (Entravision) concerning a May 8, 2024 letter decision,¹ which deleted the call signs of KASA(AM) (Station) and its associated FM translator K294CW (Translator), each of which was a KRH station at Phoenix, Arizona. KRH seeks reconsideration² and requests Special Temporary Authority (STA) to continue operating the Translator by rebroadcasting a different station

¹ *KASA Radio Hogar*, Letter Order, DA 24-432 (rel. May 8, 2024) (Decision).

² KRH, Petition for Reconsideration, Pleading File No. 0000245987 (rec. June 10, 2024) (Petition).

pending reconsideration.³ Entravision opposes these requests.⁴ Entravision, in an Interference Complaint dismissed as moot in the Decision,⁵ argued that the Translator caused interference to Entravision's co-channel station KFUE(FM), Buckeye, Arizona (Buckeye Facility). For the reasons discussed below we grant the Petition in part and deny it in part, dismiss the STA Request, and express our potential willingness to reinstate the Translator's authorization and allow it to rebroadcast a different primary station if KRH shows within 60 days such operation will not cause predicted interference and provides a plan demonstrating a commitment to take prompt action in the event of actual interference. Any reinstatement of the Translator license would potentially also reinstate our consideration of what action, if any, may be appropriate for the Translator's apparent prior violation of a program origination prohibition in section 74.1263(b) of the Commission's rules (Rules).⁶

Background.

Station History. The Station was a Class D AM facility authorized to operate during daytime hours and required to reduce power at sunset.⁷ KRH acquired the Station in 1992 and operated it with a Spanish language format. The Station lost its transmitter site in 2019 and operated at reduced power from an alternate site (STA Site) pursuant to STA which the Bureau extended five times. The STA expired on December 6, 2022.⁸ Nevertheless, as reflected in KRH's response to a Bureau Letter of Inquiry,⁹ KRH continued to operate the Station from the STA Site without further authority, except for several periods when the Station ceased broadcasting for technical problems. As discussed below, the Bureau determined that the Station's license terminated automatically on December 6, 2023, pursuant to section 312(g) of the Communications Act of 1934, as amended (Act),¹⁰ as a result of operation from an unauthorized location.

Translator History. The former licensee of the Translator moved it from Baker, California to Phoenix, Arizona pursuant to the Commission's *AM Revitalization* efforts.¹¹ In 2021, while the Station was operating pursuant to STA, KRH acquired the Translator's license by assignment so that it could

³ See KASA, STA Request, File No. 0000244657 (May 10, 2024) (STA Request); FM Translator Primary Station Notification, File No. 0000244662 (rec. May 10, 2024). KRH seeks to rebroadcast AM station KXEG, Phoenix, Arizona.

⁴ Entravision, Informal Objection to Request for Change in Parent Station and Temporary Operating Authority Pleading File No. 0000244722 (May 13, 2024) (STA Objection); Opposition to Petition for Reconsideration, Pleading File No. 0000246321 (rec. June 17, 2024) (Opposition). The parties also filed several responsive pleadings. KRH, Opposition to Informal Objection, Pleading File No. 0000245786 (rec. June 4, 2024); Entravision, Reply, Pleading File No. 0000246101 (rec. June 11, 2024); KRH, Reply to Opposition to Petition for Reconsideration, Pleading File No. 0000246914 (rec. June 25, 2024) (KRH Reply).

⁵ Entravision, Pleading File No. 0000233497 (rec. Dec. 20, 2023) (Interference Complaint).

⁶ 47 CFR § 74.1263(b).

⁷ *Id.* § 73.21(a)(3).

⁸ See File No. BESTA-20220531AAE (granted June 7, 2022) (2022 STA).

⁹ Letter of Inquiry to Barry Wood, Counsel to KRH (MB Feb. 13, 2024) (LOI); Letter from KRH to FCC at 2 (rec. Apr. 19, 2024) (Response).

¹⁰ 47 U.S.C. § 312(g).

¹¹ *Cf. Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015); *rules adopted*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 32 FCC Rcd 1724 (2017), *recon. denied*, Order on Reconsideration, 33 FCC Rcd 5082 (2018) (*AM Revitalization*).

provide a signal in the evening hours when the Station was not authorized to operate.¹² This arrangement was possible because the Translator qualified for a limited exception to the general rule that translators may not originate programming, *i.e.*, may not transmit while its primary station is off the air.¹³ Under that exception, FM translators rebroadcasting Class D AM stations during the day may continue to operate at night, but only if the AM primary station has operated within the last 24 hours (Daytimer Exception).¹⁴ The Translator and Station were not co-located, so the Station's loss of site did not affect the Translator.

In December 2023, Entravision filed its Interference Complaint alleging that the Translator was causing prohibited interference to the full service signal of Entravision's Buckeye Facility and, further, that the Translator's operations did not qualify to operate under the Daytimer Exception because the primary Station had been silent and/or operating without authority.¹⁵ The Bureau sought more information in the LOI and KRH submitted its Response.¹⁶ Following the Interference Complaint and LOI, *i.e.*, about 15 months after the 2022 STA expired, KRH requested STA to operate the Station again from the STA Site.¹⁷ KRH acknowledged that the Translator had continued to operate while the Station's prior STA had lapsed and/or was silent. In the Decision, the Bureau determined that the Translator's license expired along with the Station's license in 2023 because a condition placed on the Translator's authorization permanently linked the two stations and the Translator could not be used for any other purpose. The Bureau dismissed Entravision's Interference Complaint as moot.

Applicable Regulations and Policies. Several provisions of the Rules, Act, related caselaw, and Bureau practices are central to this proceeding. First, the Rules provide that if a broadcast station needs to operate at variance from its licensed parameters, such as at a different location, it must obtain prior authorization by requesting STA.¹⁸ The Act provides for grant of STA if, *inter alia*, there are extraordinary circumstances requiring temporary operations in the public interest.¹⁹ Second, FM translators are secondary stations that must cease operating if causing interference to any primary station or preexisting secondary station.²⁰ Next, under section 312(g) of the Act, a broadcast station's license expires automatically as a matter of law if it fails to transmit broadcast signals for 12 consecutive months.²¹ Caselaw establishes that transmissions from an unauthorized location are not considered

¹² See File No. 0000129739 (granted Apr. 9, 2021). See also File No. 0009054917 (reporting Apr. 24, 2021 consummation).

¹³ See 47 CFR § 74.1263(b).

¹⁴ *Id.*

¹⁵ See Interference Complaint, *supra*, note 5.

¹⁶ See *supra*, note 9.

¹⁷ See File No. 0000240830 (rec. Mar. 13, 2024) (2024 STA Request).

¹⁸ 47 CFR § 73.1635.

¹⁹ 47 U.S.C. § 309(f).

²⁰ See 47 CFR § 74.1203.

²¹ 47 U.S.C. § 312(g) ("If 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, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness....").

“broadcast signals” and, thus, are treated as equivalent to silence under section 312(g).²² Section 312(g) provides the Commission with limited discretion to reinstate such a terminated license to promote “equity and fairness.”²³ The Commission has exercised that discretion only rarely, generally where station operations have been impacted by natural disasters or compelling circumstances of a similar magnitude beyond the licensee’s control.²⁴ The Commission has consistently declined to exercise its section 312(g) discretion when license termination resulted from a licensee’s own inaction or exercise of business judgment.²⁵ Finally, it is Bureau practice to place conditions upon broadcast authorizations, as applicable.²⁶ The Bureau has placed one of two types of conditions upon each FM translator authorization granted during *AM Revitalization* filing windows held between 2016 and 2018. Authorizations of existing FM translator stations that the Commission permitted to move considerable distances to associate with an AM station during two filing windows held in 2016, were conditioned upon the translator’s continued association with the AM station for four years. In contrast, where no such translator relocation was possible, AM stations could apply to construct new FM translator stations in Auctions 99 and 100, held in 2017 and 2018, respectively. The Bureau placed operating conditions on Auction 99 and 100 grants linking the new translators to their associated AM stations in perpetuity. As discussed in greater detail below, the different lengths of the conditions stemmed from differences in the circumstances of the grants.

Decision. In the May 2024 Decision, the Bureau determined that the Station’s license terminated automatically on December 6, 2023, pursuant to section 312(g) upon 12 months of operation from the STA Site and/or silence without authority. The Bureau further ruled that the Translator’s license terminated along with that of the Station because a condition on the Translator’s most recent license specified that the Translator’s sole authorized purpose, in perpetuity, was to rebroadcast the Station and that any restrictions applicable to the Station were, likewise, applicable to the Translator.²⁷ Moreover, the

²² See *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff’d sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (*Eagle*); *Absolute Broad., LLC*, Memorandum Opinion and Order, 38 FCC Rcd. 4729, n.69 and cases cited therein (2023) (*Absolute*); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009).

²³ 47 U.S.C. § 312(g). The Commission considers the facts of each case individually in determining whether reinstatement based on equity and fairness would be appropriate.

²⁴ See, e.g., *V.I. Stereo Commc’ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted for station that sustained damage from three hurricanes where original facilities were destroyed and the rebuilt facility also sustained damage). See also *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Sumiton Broad. Co., Inc.*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence was necessary to comply with court order); *Universal Broad. of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (station’s inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

²⁵ See *WJBW, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 2301, 2305, para. 9 (2017) and cases cited therein.

²⁶ See 47 U.S.C. § 301 (licenses shall specify the pertinent “terms, conditions, and periods”).

²⁷ See File No. 0000129146 (granted Dec. 4, 2020) (“(1) this facility may only, in perpetuity, be used to rebroadcast the authorized facilities of the AM primary station set forth in this authorization, except that it may also originate nighttime programming if the AM primary station set forth in this authorization is not authorized regular nighttime service, and then only during periods of the broadcast day when the primary AM station is not regularly authorized to operate; (2) if the AM primary station is operating with reduced facilities, this cross-service FM translator facility

Bureau determined that operation of the Translator to originate programming during periods when the Station had not transmitted an authorized signal in the prior 24 hours would have been prohibited because it would not have qualified under the Daytimer Exception. The Bureau did not initiate enforcement action for that apparent violation, however, given its finding that the Translator's license had already terminated.

The Bureau considered whether a number of factors in the record provided a basis for reinstatement of the Station and Translator licenses, including their Spanish language programming, minority ownership, poor health of KRH's principal, purported inadvertent nature of the violations, and goals of *AM Revitalization*. However, the Bureau found that none of these factors, either individually or in combination, were a basis for reinstatement.²⁸ The Decision, therefore, deleted the Station and Translator's call signs from the Commission's database and dismissed the related filings as moot.²⁹

Discussion.

The Commission will consider a petition for reconsideration only when the petitioner shows a material error in the original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.³⁰ Petitions for reconsideration which rely on facts not previously presented to the Commission may be granted only if the Commission determines that consideration is in the public interest.³¹ We find that KRH has demonstrated an error in the portion of the Decision concerning the Translator, but not in the portion addressing the Station. We will, therefore, grant reconsideration in part and deny it in part.

Alleged Errors In Terminating the Station's License. We affirm our finding that the Station's license terminated automatically pursuant to section 312(g) and that reinstatement is not warranted. KRH

may only operate if its coverage contour conforms to the limits set forth in 47 CFR Section 74.1201(g) as applied to the reduced facilities of the AM primary station; (3) the authorization for this facility may not be assigned or transferred except in conjunction with the primary AM station set forth in this authorization; and (4) if the authorization of the AM primary station set forth in this authorization is rescinded, revoked, surrendered, subject to special temporary authorization (STA) to remain silent, or is otherwise suspended from operation, the authorization of this cross-service FM translator station shall likewise be rescinded, revoked, surrendered, silent for the duration of the AM primary station's STA to remain silent, or suspended from operation.") (Perpetuity Condition).

²⁸ See Decision at note 40, citing *International Aerospace Solutions, Inc.*, Memorandum Opinion and Order, 38 FCC Rcd 1759 (2023) (reinstatement not warranted where licenses of AM station and associated FM translator terminated following operation from an unauthorized location and licensee argued that (1) illness prevented its principal's ability to execute certain tasks; (2) licensee would assign any reinstated licenses to a member of a minority group; and (3) the stations were negatively affected by loss of site, the COVID pandemic, and loss of advertising revenue)); *New Visalia Broad., Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744, 9745, para. 3 (2014) (health problems of the licensee's principal); *Stuart Nolan*, Letter Order, 31 FCC Rcd 11716, 11726 (MB 2016), citing *Texas Grace Commc'ns*, Memorandum Opinion and Order, 16 FCC Rcd 19167, 19168, para. 3 (2001) (broadcasters must delegate matters they are unable to carry out themselves).

²⁹ The Decision dismissed KRH's requests for STA (Application File No. 0000240830), authority to remain silent (Application File No. 0000243193), and a waiver to allow the Translator to originate programming (Pleading File No. 0000243593). The Decision also dismissed as moot Entravision's Interference Complaint and an Informal Objection (Pleading File No. 0000243901) from Raymie Humbert who did not enunciate the nature of his interest and is no longer participating at this stage.

³⁰ See 47 CFR § 1.106(c)-(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

³¹ See 47 CFR § 1.106(c)(2).

argues that section 312(g) applies only to stations that are completely silent and that the statute’s legislative history does not support a different understanding.³² Accordingly, it contends that the Bureau exceeded its authority in ruling that the Station’s license terminated as a result of operation from a temporary location for which the STA had expired.³³ Also, because the Bureau had previously approved temporary operation from the STA Site, KRH argues that it was not operating from an unauthorized location. Rather, it equates its operation without a current STA to other non-conforming technical operations such as use of excess power, and suggests that enforcement action, such as a monetary forfeiture, would be more appropriate than license termination.³⁴

KRH further alleges that the Bureau erred in failing to reinstate the license under the statute’s “equity and fairness” prong. It asserts that license termination undermines the statute’s purpose to “promote equity” which, according to KRH, obligates the Commission to apply a more lenient remedy if strict application of the law would bring about a result too severe for the particular infraction.³⁵ KRH argues that loss of license is too harsh a consequence for failure to request an STA extension, especially when KRH was operating the Station from a location that the Bureau had approved in prior STAs.³⁶ KRH also notes that it had attempted to request further STA in the 2024 STA Request, but the Bureau dismissed that request in the Decision.³⁷

Although KRH acknowledges that the Commission may, in certain circumstances, appropriately limit reinstatement to circumstances beyond a licensee’s control, it argues that the policy is not appropriate in the present situation.³⁸ Specifically, KRH asserts that the instant case involves an STA extension request and that the Bureau often grants such extensions without requiring the licensee to demonstrate a matter outside of its control.³⁹ KRH maintains that the Bureau erred by not considering a purported “virtual certainty” that the Bureau would have approved continued operation from the STA Site had KRH not inadvertently failed to file a timely request for STA.⁴⁰ Moreover, although KRH recognizes that the Bureau has previously declined to reinstate licenses in cases that raised some similar factors to those at hand, KRH argues that the Commission should reexamine whether such policies, including their potential impact on minority owners, serve the public interest.⁴¹

Entravision responds that the Bureau correctly found that the Station’s license terminated. It argues that KRH provides no reason to abandon well established precedent that operating from an

³² Petition at 7-8.

³³ *Id.*

³⁴ *Id.* at 7.

³⁵ KRH states, for example, that equitable relief would be appropriate instead of “executing a person for failing to renew his driver’s license.” Petition at 6. KRH’s understanding of the terms “equity” and “promote” is based on dictionary definitions. *See id.*, n.5, citing Cambridge Dictionary, 2024.

³⁶ Petition at 6.

³⁷ *See* File No. 0000240830 (filed Mar. 14, 2024, dismissed May 8, 2024).

³⁸ Petition at 5-6.

³⁹ *Id.*

⁴⁰ *Id.* at 4-5. In support of this argument, KRH presents a new statistical analysis it has compiled of action on requests for engineering STAs over a ten-year period. It concludes that the Bureau has acted favorably on such requests more than 98 percent of the time. *Id.*

⁴¹ *Id.* at 7.

unauthorized site is the equivalent of not operating at all.⁴² Entravision also contends that KRH did not adequately serve the community because it operated with significantly reduced power for over three years without making progress to restore permanent service.⁴³

Entravision further contends that the Decision correctly found no equity and fairness basis for reinstatement. It supports the Commission's practice of limiting reinstatement to significant difficulties beyond the licensee's control, and argues that operation from an unlicensed site is within a licensee's control because it involves an intent to relocate.⁴⁴ Entravision further argues that KRH wrongly assumes that the Bureau would have extended the 2022 STA in a *pro forma* manner had KRH so requested; it argues that circumstances can change from the time of one STA request to another.⁴⁵ According to Entravision, the Decision was consistent with cases cited therein in which the Bureau had not exercised its discretion in similar circumstances.⁴⁶ Finally, Entravision maintains that KRH's theory of equity would create an exception so broad that it would "swallow the rule."⁴⁷

We affirm our determination that the Station's license terminated and that reinstatement is not warranted. Contrary to KRH's assertion, it is well settled that, despite absence of a specific discussion in the legislative history, section 312(g) is not limited to utter silence and that operation from an unauthorized site does not prevent license termination.⁴⁸ We find unavailing KRH's argument that its operation pursuant to an expired STA is more akin to an engineering violation than to operation from an unauthorized location. That argument relies on the Commission's holding in *Absolute* that operation at an unauthorized site triggers section 312(g), but operation with non-conforming equipment at an authorized location only raises the potential for enforcement action.⁴⁹ Contrary to KRH's assertion, the STA Site was not an "authorized location" by virtue of prior STA grants. Because the 2022 STA expired, continued use of that location was unauthorized. KRH did not request replacement of the expired 2022 STA until well over a year after expiration, following Entravision's Interference Complaint. Nor do we accept KRH's suggestion that we should reevaluate section 312(g) policies when a minority broadcaster is affected. All broadcasters are subject to the same rules.⁵⁰ Nor is there any merit to KRH's contention that section 312(g)'s inclusion of the term "equity" requires the Commission to apply a general dictionary definition of that term instead of following more specific broadcast regulations and caselaw. As the Commission has noted in rejecting a similar argument, the Act provides for license termination as the norm and, although it grants the Commission limited discretion to make exceptions, the Act neither

⁴² Opposition at 6.

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 4, citing Decision at 5.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 6.

⁴⁸ See *Eagle*, 563 F.3d at 552 *affirming*, 23 FCC Rcd at 600-601 (2008); *A-O Broad. Corp.*, Memorandum Opinion and Order 23 FCC Rcd 603, 616-17 (2008).

⁴⁹ See *Absolute*, 38 FCC Rcd. at 4735-56, paras. 18-21.

⁵⁰ See *Ernest Sanchez, Esq.*, Letter Order, 31 FCC Rcd. 7087, 7090 (MB 2016) (minority status and health problems are not compelling reasons beyond a licensee's control; although the Commission strongly encourages minorities to become broadcast licensees, there is no basis in the statute or its legislative history to apply a more lenient section 312(g) reinstatement standard to minority-owned broadcast stations).

defines “equity and fairness” nor requires reinstatement.⁵¹ Nor does the Act require, as KRH suggests, that we extrapolate what outcome hypothetically might have occurred had the facts been different, *i.e.*, had KRH timely requested an STA extension. Rather, the Commission’s practice is to examine actual facts on a case-by-case basis. The Decision, consistent with statute and Commission practice, properly undertook such an analysis and determined that KRH’s circumstances did not warrant exercise of the Bureau’s discretion. KRH’s presentation of statistics concerning STA grants to others is not appropriate on reconsideration because it was not before the Bureau at the time of the Decision. Nor would that information have changed our analysis because the statistics do not, as KRH asserts, provide any basis for reinstatement based on the facts of the instant proceeding.⁵² We affirm the Decision’s rulings with respect to the Station’s license for the reasons stated therein.

Alleged Errors in License Termination of the Translator. KRH contends, and we agree, that the Decision’s finding with respect to the Translator was based on an incorrect premise that the Translator’s license was permanently linked to that of the Station. KRH states, and the Commission’s database confirms that, beginning in 2016, the Translator’s authorizations to rebroadcast the Station at Phoenix linked the Translator to the Station for a period of only four years.⁵³ KRH believes that the addition of the “in perpetuity” language was a “clerical error” added in 2020 when the Translator’s prior licensee received further authorizations to modify the station.⁵⁴ KRH further states that the assignment authorization by which it acquired the station in 2021 contained language requiring it to notify the Commission of any change of the primary station being rebroadcast, which KRH argues is indicative of the Translator’s potential independence from KASA.⁵⁵ KRH seeks STA to rebroadcast a different station, at reduced power, pending a reconsideration decision.⁵⁶ It argues that it and its time broker will otherwise experience economic harm.⁵⁷

Entravision asserts that the Bureau properly determined that the Translator’s license expired along with that of the Station because the two stations were inextricably linked under the terms of the condition on the Translator authorization. Further, Entravision argues that even if KRH is correct that the license condition was erroneous, the former licensee never challenged the condition, the asset purchase agreement with KRH referenced the license which contained that condition, and KRH did not challenge the condition in the three years since grant of the assignment.⁵⁸ Entravision further contends that,

⁵¹ Rather, the Act provides the Commission discretion, *i.e.*, that it “*may* extend or reinstate” a license, but the general rule is that most affected licenses will be forfeited. *Eagle*, 23 FCC Rcd at 600, para. 25. Were the Commission to apply general principals as KRH proposes, the Commission would likely find any loss of license inequitable, nullifying section 312(g). *Id.*

⁵² Even absent the procedural bar to presenting this information for the first time on reconsideration, KRH has shown, at most, the number of prior STA requests the other applicants had made, some of which were greater than and some lesser than those of KRH. It does not undertake an examination of any facts or attempt to show that they were similar to KRH’s.

⁵³ Petition at 9. The Translator’s original license provided that the licensee “shall be subject to the following restrictions: From the grant of the construction permit and continuing until the facility has achieved four years of on-air operations rebroadcasting [KASA], the licensee may not change such primary station”

⁵⁴ *Id.* at 10.

⁵⁵ *Id.*, citing 47 CFR § 74.1284(b).

⁵⁶ See STA Request.

⁵⁷ *Id.* at 2.

⁵⁸ Opposition at 7.

regardless of the condition, the Translator's license expired under section 312(g) because, for a period exceeding 12 months, the Station it purports to have retransmitted was not, itself, operating legally.⁵⁹ Entravision argues that the Translator's origination of programming during this period is the legal equivalent of not operating at all. It asserts that even if KRH could have modified the Translator's primary station during this period, it did not.

Entravision further contends that should the Bureau, nevertheless, be inclined to reinstate the Translator license, it must first address the issues raised in the Interference Complaint and dismissed as moot in the Decision.⁶⁰ Entravision believes that continued interference is likely because the Translator's transmission site is located within the 45 dBu contour of the co-channel Buckeye Facility and the Translator previously caused interference to that facility.⁶¹ Entravision does not credit KRH's commitment to cease broadcasting in the event of any unforeseen actual interference because Entravision alleges that KRH continued to operate the Translator for months after Entravision previously informed it of interference.⁶²

Entravision repeats several of these arguments as grounds for not granting the 2024 STA Request.⁶³ It further argues that there is no legal basis to grant the 2024 STA Request because the Station's license has expired⁶⁴ and KRH has not demonstrated "extraordinary circumstances" requiring temporary operations.⁶⁵

Upon considering the parties' arguments, we conclude that the Perpetuity Condition on the Translator license was placed there by mistake in 2020. The Bureau was unaware of this issue when it issued the Decision and, thus, did not examine the history of conditions placed on the Translator's previous authorizations. As mentioned above, the *AM Revitalization* proceeding created two types of opportunities for AM licensees to receive FM translator authorizations, one by relocating existing translators and the other by authorizing new translators, and the conditions on the resulting authorizations were different. The instant Translator, which had been authorized since 2013,⁶⁶ benefited from an opportunity in a 2016 Modification Window to relocate the Translator's existing facilities from California to Arizona.⁶⁷ The ability of such Modification Window applicants to move up to 250 miles as a minor

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ STA Objection at 3-4.

⁶⁴ *Id.* at 1, citing *John C. Trent, Esq.*, Letter Order, 27 FCC Rcd. 2925, 2926 (MB 2012) (noting prior dismissal of STA request where underlying license had expired under section 312(g)).

⁶⁵ *Id.* at 2.

⁶⁶ The Translator's first construction permit, granted in 2013, preceded *AM Revitalization*, specified an FM primary station, and contained no limitation on selection of a different primary station.

⁶⁷ The Commission opened two FM translator modification filing windows in 2016, allowing AM broadcasters to relocate FM translator stations in order to enhance their service (Modification Windows). The first modification window, open from January 29, 2016 to July 28, 2016, was available to Class C and Class D AM stations. KRH's predecessor in interest, Mountain Community Translators, LLC (MCT), participated in that first window. MCT received an authorization to relocate the Translator (then identified as K291CI, Baker, CA) to Phoenix, Arizona, where it would become K294CW and improve KASA(AM), which was licensed to KRH. See File No. BPFT - 20160129AWA (filed Jan. 29, 2016, granted Feb. 18, 2016). The second window, open from July 29, 2016 to October 31, 2016, was available to all other AM stations.

change was similar to a prior, more individualized procedure known as “Mattoon waivers” through which the Bureau, on a case-by-case basis, waived limits on the types of changes that could be accomplished in a single step as a “minor” change.⁶⁸ Because each grant of a Mattoon waiver had been conditioned upon a requirement that the translator continue rebroadcasting the same primary station for four years, the Commission directed the Bureau to place a similar condition on authorizations obtained in the Modification Windows (Four-Year Condition).⁶⁹ Accordingly, the Translator’s authorizations in 2016 and 2017⁷⁰ appropriately contained a Four-Year Condition restricting any change to a different primary facility until the Translator achieved four years of on-air operations rebroadcasting the Station.

An alternate way that an AM licensee might obtain an FM translator was to participate in one of two auction windows, Auctions 99 and 100, held in 2017 and 2018, respectively. During those auction windows, AM stations that did not participate in either of the 2016 Modification Windows could apply to build a new FM translator station to retransmit the AM signal.⁷¹ Because the only applicants eligible to participate in the windows were existing AM licensees, generally with the least powerful stations, and many of Auction 100 proposals were “singletons” that were not mutually exclusive with any other application, applicants could generally obtain a translator authorization without competitive bidding or at a much lower cost than those in the Modification Windows which had generally relocated an existing facility purchased at fair market value. The Commission believed that it would make little sense to provide AM broadcasters with this no cost/low cost opportunity to enhance their service if they could then assign or transfer the resulting FM translator authorization at a profit to independent parties unaffiliated with the primary AM station.⁷² The Commission, therefore, directed the Bureau to place a Perpetuity Condition on any authorization granted in Auction 99 and 100, permanently linking the translator to the AM primary station acquiring it.

Placement of a Perpetuity Condition on the Translator’s license was erroneous because that condition applied only to Auctions 99 and 100; the Translator’s authorization was unrelated to those auctions and, in fact, long preceded them.⁷³ Apparently, the Bureau first added the Perpetuity Condition

⁶⁸ See *John F. Garziglia*, Letter Order, 26 FCC Rcd 12685 (MB 2011) (waiving 47 CFR § 74.1233(a)(1)) (“Mattoon”).

⁶⁹ The condition required the modified FM translator to rebroadcast the specified AM primary station for a period of four years of on-air operation, exclusive of silent periods, commencing with the initiation of on-air service at the new location.

⁷⁰ See File Nos. BPFT-20160218ABD (granted Mar. 8, 2016), BPFT-20160421AAJ (granted June 1, 2016), BLFT-20160713AAY (granted July 25, 2016), BPFT-20160919AAB (granted Oct. 5, 2016), BLFT-20161117ABV (granted Nov. 28, 2016), BPFT-20171115AAZ (granted Nov. 28, 2017), BLFT-20171129ABI (granted Dec. 13, 2017).

⁷¹ Auction 99, was limited to resolving 12 mutually exclusive groups of applications for new FM translators. See *Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018*, Public Notice, 33 FCC Rcd 2763 (MB/WTB 2018). Auction 100 provided an opportunity for other AM licensees to apply for new cross-service translators. See *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to be Open January 25-January 31, 2018*, Public Notice, 32 FCC Rcd 10173, 10174, para. 1 (MB/WTB 2017).

⁷² *Revitalization of AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15227, para. 14 (2013); First Report and Order, 30 FCC Rcd 12145, 12154, para. 17 and n. 43 (2015).

⁷³ File No. BNPFT-200314BPT (granted Feb. 28, 2013). The Translator’s first permittee, the Association for Community Education, Inc. (ACE), had originally applied for a construction permit in 2003 but was affected by a freeze on application grants. See File No. BNPFT-20030825ANQ (filed Aug., 25, 2003). The construction permit

to the Translator's authorization in 2020 after MCT applied to reduce power and modify the Translator's directional antenna in order to protect planned operation of the Buckeye Facility, which Entravision was relocating from channel 295 to channel 294, the same channel as the Translator uses.⁷⁴ When MCT assigned the Translator license to KRH in 2021, the version of the license the Commission issued erroneously continued to contain the Perpetuity Condition.⁷⁵ The license, by that time, should have been unconditional because the appropriate Four-Year Condition had already run.

It is true, as Entravision highlights, that neither KRH nor its predecessor timely contested the Perpetuity Condition on the Translator authorization.⁷⁶ However, we will not enforce the condition because Bureau staff clearly placed it on the license by mistake.⁷⁷ There is no reason that an FM translator authorized prior to the Auctions 99 and 100 windows should be subject to a Perpetuity Condition. To the contrary, the only action that would bring the instant Translator within *AM Revitalization* restrictions was its relocation from California to Arizona, for which it received a Four-Year Condition that had already been satisfied. The Bureau was unaware of this error until KRH brought it to our attention in the Petition. Administrative agencies have authority to correct inadvertent administrative errors, and we find that such action is appropriate here.⁷⁸

Nor do we accept Entravision's view that, regardless of any license condition, the Translator license terminated under section 312(g) because the Translator was rebroadcasting a Station that was itself unauthorized.⁷⁹ As noted in the Decision,⁸⁰ the Commission and courts have held that operation from an unauthorized site is no better than silence for purposes of section 312(g).⁸¹ Other lesser violations, however, generally do not trigger section 312(g) termination, although they may result in monetary forfeitures or other enforcement action.⁸² In this proceeding, the Station was operating at an unauthorized site but the Translator operated from a duly licensed location. The Translator's operation, thus, did not trigger section 312(g). Rather, the Translator's origination of programming at a time when it did not qualify for the Daytimer Exception might be a matter for enforcement action.

authorized the translator to serve Baker, California by retransmitting the signal of noncommercial educational station KMRO(FM), Camarillo, California. ACE did not build but, rather, assigned the permit to MCT in 2015. *See* File No. BAPFT-20150413AAE (granted July 6, 2015). Shortly after grant, MCT filed an application to modify the station by changing channels and designating a new primary station, KHYZ(FM), Mountain Pass, CA. *See* File No. BMPFT-20150720AAI (granted Aug. 21, 2015). The Translator's modified facilities were licensed in 2016. *See* File No. *See* File No. BLFT-20151215AFK (granted Jan. 11, 2016) (January License). The January License did not contain any restriction on the ability to change primary stations.

⁷⁴ *See* File Nos. 0000112257 (granted July 2, 2020), 0000129146 (granted Dec. 4, 2020).

⁷⁵ *See* File No. 0000129739 (granted Apr. 9, 2021, consummated Apr. 24, 2021).

⁷⁶ *See* 47 CFR § 1.110 (30-day period for rejection of conditional grant).

⁷⁷ Likely, staff mistakenly included the condition at a time when most translator applications under consideration pertained to new stations obtained in Auctions 99 or 100.

⁷⁸ *See Robert Fetterman*, Memorandum Opinion and Order, 16 FCC Rcd 8221, 8233, para. 5 (2001), citing *Chlorine Inst. v. OSHA*, 613 F.2d 120, 123 (5th Cir.), *cert. denied*, 449 U.S. 826 (1980) and *American Trucking Ass'n v. Frisco Transp. Co.*, 358 U.S. 133, 145-46 (1958).

⁷⁹ KRH describes this argument as "pretzel logic." KRH Reply at 7.

⁸⁰ Decision at 3.

⁸¹ *See supra* note 22.

⁸² *See Absolute*, 38 FCC Rcd. at 4735-56, paras. 18-21.

Next Steps. Our finding of an error in the Translator portion of the Decision raises a possibility that we might reinstate the Translator's license and authorize it to rebroadcast a different AM station. However, we will not do so immediately, either by permanent or temporary action, because the record is unclear concerning whether KRH would be able to operate without causing prohibited interference. The Translator is located within the 45 dBu contour of the co-channel Buckeye Facility, and there is a history of alleged interference between the two facilities. Despite preemptive attempts to prevent potential interference by reducing power and modifying the Translator's directional antenna pattern, the matter was not resolved. Nor was it resolved thereafter when Entravision brought alleged actual interference to KRH's attention. We agree with Entravision that KRH must show that the Translator will not cause predicted interference and will take immediate steps to address any actual interference, prior to our considering any reinstatement of the Translator license.

Within 60 days of this Letter Order, KRH may file a new request to modify its terminated license for the Translator. It should coordinate with Bureau staff to arrange for the filing to be accepted in the broadcast database despite the license's appearing therein as terminated. The submission should include an engineering exhibit demonstrating that the facilities will protect all full service stations and previously authorized secondary stations. It should also include a plan identifying the specific procedures it pledges to follow in response to any complaints of actual interference to immediately resolve the interference or cease operating.⁸³ Entravision and any other potentially affected party will have 30 days to comment. The Bureau will consider what action is appropriate based on the information submitted. If the Bureau finds that reinstatement of the Translator license is appropriate, it may also consider what action, if any, would be appropriate for prior program origination outside of the Daytimer Exception. KRH may, if it so desires, propose any such action including, for example, potential terms of a consent decree.

Conclusion.

Accordingly, IT IS ORDERED that the Petition for Reconsideration of KASA Radio Hogar IS GRANTED IN PART to the following extent: The Bureau will for a period of 60 days from the date of this Letter Order continue to protect the former licensed facilities of FM Translator K294CW, Phoenix, Arizona, Facility ID No. 148238. KRH may, within that 60-day period, file an application to modify the Translator's license to rebroadcast a new primary station, along with a showing that its proposed operations will not cause interference to any primary station or pre-existing secondary station and a plan specifying how it will address any interference complaints. Interested parties will have the opportunity to object to the application, including to the interference showing.

IT IS FURTHER ORDERED that if the Bureau, in its sole discretion, determines that KRH has made a satisfactory showing that proposed operation of FM translator K294CW, Phoenix, Arizona, Facility ID No. 148238, will comply with all Commission Rules including those governing interference, the Bureau will reinstate the Translator's license WITHOUT PREJUDICE to any enforcement action that it may find appropriate for past rule violations. Any such reinstated license will

⁸³ Entravision alleges that despite a previous pledge by KRH to cease broadcasting immediately upon any interference, the Translator continued to operate for months after Entravision notified KRH of alleged interference to the Buckeye Facility. *See* Opposition at 10. Accordingly, we expect KRH to provide more than another pledge at this time. It should present a plan referencing specific procedures that it will follow in response to any interference such as the name and title of the first line staff member who will address the problem, who that person would contact for engineering assistance, and other pertinent details. KRH's plan should also provide information that would be useful to someone experiencing interference. For example, who at KRH should a broadcaster such as Entravision contact to report interference? If that person's first language is not English, what arrangements has KRH made to ensure effective communication?

contain appropriate conditions including a requirement for the Translator to cease operation if actual interference occurs but will not contain a permanent restriction on the primary station that the Translator can rebroadcast.

IT IS FURTHER ORDERED that the Petition IS DENIED in all other respects, including but not limited to the automatic termination of the license of KASA(AM), Phoenix, Arizona, Facility ID No. 33451, and dismissal of various related filings as moot.

IT IS FURTHER ORDERED that the May 10, 2024 requests of KASA Radio Hogar for Special Temporary Authority to broadcast KXEG(AM), Phoenix, Arizona, File Nos. 0000244657 and 0000244662, ARE DISMISSED as moot.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau



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DA 24-776

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WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY SEEK COMMENT ON NEXTNAV PETITION FOR RULEMAKING

WT Docket No. 24-240
RM-11989

Comments Due: September 5, 2024

Reply Comments Due: September 20, 2024

NextNav Inc. (NextNav) filed a petition for rulemaking requesting that the Commission initiate a proceeding to reconfigure the 902-928 MHz band (Lower 900 MHz Band) and adopt new rules to enable the deployment of a 5G terrestrial positioning, navigation, and timing (PNT) network that “complements and backs up” the U.S. Global Positioning System (GPS).¹ By this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) jointly seek comment on NextNav’s Petition.

Background. In 1995, the Commission established the Location and Monitoring Service (LMS) in the 902-928 MHz band, defining two types of LMS systems: multilateration LMS (M-LMS) and non-multilateration LMS (non-M-LMS), that share the band with a variety of other users under a hierarchy of spectrum usage rights.² The Lower 900 MHz Band is divided into sub-bands: two for use by M-LMS, two for non-M-LMS, and one for both types of LMS systems shared on a co-equal basis.³ The band is used for a diverse range of operations, both federal and non-federal, and is allocated on a primary basis to both federal radiolocation systems and industrial, scientific, and medical (ISM) equipment.⁴ Federal fixed

¹ NextNav Petition for Rulemaking, Enabling Next-Generation Terrestrial Positioning, Navigation, and Timing and 5G: A Plan for the Lower 900 MHz Band (902-928 MHz) at i (filed Apr. 16, 2024). NextNav also filed a supplement proposing specific part 90 rule revisions. Letter from Robert Lantz, General Counsel, NextNav Inc., to Marlene H. Dortch, Secretary, FCC (filed June 7, 2024) (jointly referred to as “Petition”).

² See generally *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, PR Docket No. 93-61, Report and Order, 10 FCC Rcd 4695 (1995). LMS systems use non-voice radio techniques to determine the location and status of mobile radio units.

³ 47 CFR § 90.357.

⁴ *Id.* §§ 2.106, 18.301, 18.111(c). ISM equipment is defined as “equipment or appliances designed to generate and use locally RF energy for industrial, scientific, medical, domestic or similar purposes, excluding applications in the field of telecommunication.” *Id.* § 18.107(c).

and mobile services are allocated on a secondary basis to federal radiolocation systems and ISM equipment.⁵ LMS licenses are allocated on a secondary basis to federal users and ISM devices.⁶

Amateur radio operations are allocated on a secondary basis to LMS.⁷ Part 15 unlicensed devices also operate in the band, are not typically afforded interference protection, and may not cause harmful interference to LMS licensees, amateur operations, or other licensed systems.⁸ However, Commission rules intended to ensure coexistence between services require M-LMS licensees to demonstrate through field tests that their systems do not cause unacceptable levels of interference to part 15 devices.⁹

According to the Commission's Universal Licensing System (ULS), Progeny LMS, LLC (Progeny), an operating subsidiary of NextNav, is one of two M-LMS licensees.¹⁰ Progeny won its M-LMS licenses at auction in 2000 and has been granted multiple extensions of its construction deadlines, ultimately conditioned on assisting wireless carriers in meeting their required wireless E911 location accuracy deadlines.¹¹ There are approximately 1,500 active non-M-LMS licenses in the band.

NextNav's Petition for Rulemaking. NextNav asks that the Commission reconfigure the Lower 900 MHz Band by creating a 5-megahertz uplink in the 902-907 MHz band paired with a 10-megahertz downlink in the 918-928 MHz band, shifting all the remaining non-M-LMS licensees to the 907-918 MHz portion of the band.¹² NextNav proposes a spectrum "swap" to trade in its current M-LMS holdings for a single, nationwide 15-megahertz flexible use license pursuant to the new band plan.¹³ NextNav proposes specific updates to the Commission's rules, including the addition of mobile and fixed allocations to the non-Federal portion of the Table of Frequency Allocations, revisions to existing part 90 rules, and the addition of a new subpart for a "Terrestrial Positioning, Navigation, and Timing Service" (TPNT).¹⁴ We seek comment on all aspects of the Petition, including its associated costs and benefits. We categorize below certain issues raised in the Petition and include specific questions. We seek to develop a robust record and welcome comment on additional related issues that commenters may identify.

TPNT as a Complement to GPS. NextNav discusses the vulnerabilities of GPS and states that its technology is the only viable solution for a nationwide terrestrial PNT system to complement GPS.¹⁵

⁵ *Id.* § 2.106 footnotes 5.150 and US 11.

⁶ *Id.* § 90.353(a). LMS is permitted through a table footnote, subject to not causing interference to all federal stations and accepting interference from federal and ISM operations. *See id.* § 2.106 footnote US 275.

⁷ *Id.* § 97.301. *See also id.* § 2.106 footnotes US 267 and US 275.

⁸ *Id.* § 90.361.

⁹ *See id.* § 90.353(d). Also, users of part 15 devices conforming to specified technical conditions under a safe harbor rule are insulated from claims in the band that they cause harmful interference to M-LMS systems. *See id.* § 90.361.

¹⁰ The other licensee, Telesaurus Holdings GB LLC (Telesaurus), is an entity formerly controlled by the late Warren Havens and currently licensed under a court-ordered receivership.

¹¹ *See Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, WT Docket No. 12-202, Order, 32 FCC Rcd 122 (WTB MD 2017) (*Progeny 2017 Order*). In 2023, WTB granted Progeny further relief, consistent with its license condition to facilitate E911 location accuracy, to substitute coverage of tall buildings in lieu of population to meet the build-out requirement for its licenses. *See Request for Waiver and Extension of Time, Further Request for Waiver and Extension of Time, Request for Waiver Request, and Request for Waiver and Extension of Time*, WT Docket No. 12-202, Order, 38 FCC Rcd 2342 (WTB MD 2023) (*Progeny 2023 Order*).

¹² Petition at 28–30.

¹³ *Id.* at 30.

¹⁴ *Id.* at A-1, A-2. NextNav also seeks the addition of mobile and fixed allocations to the non-Federal portion of the Table of Frequency Allocations.

¹⁵ *Id.* at 3–7, 10–14, 27.

NextNav notes that in March 2024, the Department of Transportation (DOT) issued a request for quotes for complementary PNT.¹⁶ Further, DOT recently awarded contracts to nine PNT technology vendors seeking to provide a complementary PNT service to GPS, including a \$1.9 million award to NextNav to conduct testing of its 3D PNT technologies.¹⁷ Will these contracts support experimental testing of PNT in the Lower 900 MHz Band or other frequency bands? We seek comment on what research or testing has been conducted or will be conducted and the timing of such experimental licensing activities. We seek comment, including technical information, on the characteristics and capabilities that are needed for a system to function as a PNT complement to GPS. We seek comment on how a terrestrial PNT system can serve as a “backup” to GPS,¹⁸ including whether the proposed system is capable of ubiquitous nationwide coverage, including U.S. territories, similar to GPS. What is needed in the way of infrastructure to create such coverage? What costs are involved? What particular considerations support or mitigate against the use of the Lower 900 MHz Band for a terrestrial PNT system, and should the Commission consider other bands for this purpose?

Wireless E911 Location Accuracy. NextNav asserts that its NextGen network would provide “3D positioning accuracy” that would provide a better service experience and meet the Commission’s horizontal indoor location requirement and 3-meter z-axis requirement.¹⁹ We seek comment on how facilitating NextNav’s proposal would enhance wireless E911 indoor location accuracy more generally, including for the provision of dispatchable locations, and any further benefits that would accrue to Public Safety Answering Points (PSAPs) and first responders in emergency situations.²⁰ How would NextNav’s plan support the ability to provide first responders with situational awareness and navigation? How would the proposal support land mobile radio (LMR) base station synchronization for public safety? How would NextNav’s proposal seeking to turn in all of its conditioned M-LMS licenses in exchange for a new nationwide flexible use license, focused on providing a complement to GPS and making excess spectrum available for commercial broadband service, affect its ability to meet the conditions currently on Progeny’s licenses, including a requirement to “continue to provide location accuracy services on all of its B and C Block licenses for at least a five (5) year period ending April 3, 2028”?²¹ Further, NextNav states that its “solution will operate according to 3GPP standards....”²² Would wireless carriers be able to use a standards-based solution to provide PNT using their networks in commercial bands other than the Lower 900 MHz Band? Would mobile device handsets deployed on wireless carrier networks support the necessary functionality to implement NextNav’s PNT vision that meets the wireless E911 location accuracy requirements? We seek comment from stakeholders on the extent of commercial availability of those handsets, including timing and breadth.

¹⁶ *Id.* at 7.

¹⁷ See U.S. Department of Transportation, *Department of Transportation Awards \$7 Million for Complementary Positioning, Navigation and Timing Technologies*, (July 3, 2024), <https://www.transportation.gov/briefing-room/departments-transportation-awards-7-million-complementary-positioning-navigation-and>.

¹⁸ See *supra* note 15.

¹⁹ Petition at 26–28.

²⁰ 47 CFR § 9.10(i) (wireless E911 indoor location accuracy requirements for Commercial Mobile Radio Service providers). Dispatchable location in the wireless context refers to “A location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.” *Id.* § 9.10(i)(1)(i).

²¹ See *Progeny 2023 Order*, 38 FCC Rcd at 2357, para. 34.

²² Petition at 23.

Identification and Protection of Incumbents. NextNav indicates that it will work with all the incumbents in the band, including federal (radiolocation, fixed, and mobile), ISM, non-M-LMS, amateur, and unlicensed part 15 device users, and suggests that the Commission could place conditions on a newly issued NextNav license to ensure protection.²³ NextNav commits to protecting federal users,²⁴ but does not identify them, their location, or provide details explaining how it will afford protection. We therefore seek comment on how protection of primary federal users would be accomplished under the proposal and what technical restrictions might be necessary to achieve this goal. Regarding primary non-federal incumbents, NextNav asserts that the “limited number” of these devices should not particularly require protection and proposes a rule generally requiring interference protection to primary incumbents.²⁵ We seek comment on whether and what specific technical rules are necessary to ensure required protection. We also invite comment on the status of any outreach with primary federal and non-federal incumbents.

With regard to non-M-LMS incumbents, NextNav indicates it will conduct outreach on impacts and mitigation measures, “including by paying for retuning or relocation,”²⁶ but does not quantify or describe the potential effects or indicate how relocation would be accomplished. We seek comment on potential impacts, including details regarding incumbent relocation, whether any incumbents could continue to operate in the proposed 11 MHz segment of the band where currently located, and any information on the status of discussions between NextNav and non-M-LMS incumbents.

The Petition recognizes that there currently are unlicensed part 15 devices operating in the Lower 900 MHz Band, but it is unclear regarding the extent to which the proposed reconfiguration would impact potentially millions of such devices. With respect to part 15 devices, NextNav states that it is completing technical analyses and “will work with unlicensed users to understand their spectrum requirements.”²⁷ NextNav does, however, seek the removal of the current requirement that it not cause unacceptable levels of interference to part 15 devices.²⁸ NextNav also states that updating the band to increase flexibility will not impact amateur users.²⁹ We seek comment on the extent of part 15 devices and amateur operations in the band and what potential impact band reconfiguration and flexible use rules, including elimination of the testing requirements of current rule section 90.353(d),³⁰ might have on part 15 devices and on the amateur community. What services are being provided by part 15 devices and amateur operations in this band? Can they be accommodated in other spectrum bands? What are the costs for relocation and how long would it take? We also seek comment on the status of any outreach with part 15 device users and amateur licensees.

Given the multitude of different types of incumbents currently operating in the Lower 900 MHz Band, we ask that commenters address the costs and benefits involved in implementing the proposed band plan, including the impact on incumbents in terms of relocation or protection. Are NextNav’s proposed rule changes adequate, or are additional or revised rules required? Should the Commission consider alternative ways to reconfigure the band that would better increase spectrum efficiency and support a terrestrial complement to GPS, while taking into consideration the variety of incumbents, their respective allocations and levels of protection, and existing operations?

²³ *Id.* at 30.

²⁴ *Id.*

²⁵ See Petition, at A-11.

²⁶ *Id.* at 31.

²⁷ *Id.*

²⁸ See Petition at A-6 (proposing to amend § 90.361), A-11 (proposing to add § 90.1410(c)).

²⁹ *Id.* at 32.

³⁰ 47 CFR § 90.353(d).

Spectrum Swap, Increased Flexibility, and Potential Windfall. NextNav proposes a spectrum “swap,” whereby NextNav would “return all active licenses and associated applications and petitions in exchange for a nationwide license consistent with the new 15-megahertz band plan configuration.”³¹ NextNav states that it holds approximately 64% of all B and C Block licenses and seeks to acquire all active M-LMS A Block licenses.³² NextNav seeks to swap post-transaction holdings of 14 megahertz for a 15 megahertz flexible use nationwide license. We seek comment on NextNav’s proposal to receive more spectrum in a larger geographic area than currently held. We seek comment on the relationship of the requested swap to Progeny’s prospective compliance with license conditions applied to its M-LMS B and C Block licenses through prior grants of relief, as well as its currently pending requests for relief.³³ We also note that Progeny’s A Block licenses were terminated and, unlike its B and C Block licenses, were not authorized by the Commission for commercial operations.³⁴ How would this fact impact the proposed swap?

NextNav indicates that its PNT solution would only use a small amount of the 10-megahertz capacity, and that it would partner with wireless providers to use the excess capacity for broadband.³⁵ We seek comment on the mechanics of a partnership that would be consistent with section 310(d) of the Communications Act.³⁶ To enable carrier use of NextNav’s prospectively licensed spectrum, does the proposal necessarily rely on secondary markets, e.g., leasing or partitioning/disaggregation? Are other arrangements possible that would provide operational authority and comply with our regulations and the Act? WTB notes that until April 3, 2028, Progeny’s B and C Block licenses may not be assigned, transferred, partitioned, disaggregated, and/or leased to any third party unless the potential assignee, transferee, partitionee, disaggregatee, and/or lessee requests a waiver consistent with the relief granted to Progeny, and WTB grants such relief.³⁷ Would similar requirements be needed in connection with NextNav’s proposal as a way to help ensure that arrangements with wireless providers are consistent with the conditions of Progeny’s licenses? We seek comment on the costs and benefits of the proposal that the Commission designate NextNav as the nationwide licensee with rights to lease almost 10 megahertz of spectrum.

NextNav requests that the Commission modify its M-LMS service and technical rules to “align with the Commission’s flexible-use rules (e.g. Part 27) for mobile and/or fixed broadband operations, including full macro power limits and standard out-of-band-emissions limits,” and eliminate the

³¹ Petition at 30.

³² *Id.* at 29–30. Progeny seeks to acquire 128 A Block licenses currently held by Telesaurus. See ULS File No. 0011022019. Progeny also asks WTB to reinstate 129 licenses that were terminated (currently subject to a petition for reconsideration) and assign them to Progeny. See *id.*; *Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, & Telesaurus Holdings GB, LLC, Applications for Waiver and Limited Extension of Time*, WT Docket No. 16-385, Report and Order, DA 17-1124, 32 FCC Rcd 9458 (WTB MD 2017) (*Applications 2017 Order*); *Petition for Reconsideration of Susan L. Uecker*, WT Docket No. 16-385 (filed Dec. 20, 2017).

³³ Currently, 72 Progeny licenses remain the subject of a pending request for an extension of time to April 2025, which coincides with a z-axis location accuracy deadline for nationwide providers. See *Progeny LMS, LLC, Request for Waiver and Extension of Time*, WT Docket No. 12-202 (filed Mar. 31, 2023).

³⁴ In 2017, WTB denied the waiver/extension requests for Progeny’s two A Block licenses, which were not authorized to provide commercial operations, and therefore terminated as of July 2012. See *Progeny 2017 Order*. Progeny filed a petition for reconsideration and a petition for modification of the A Block licenses, both of which are pending. *Progeny LMS, LLC’s Petition for Reconsideration*, WT Docket No. 12-202 (filed Feb. 16, 2017); *Progeny LMS, LLC’s Petition for Modification of A Block M-LMS Licenses*, WT Docket No. 12-202 (filed Apr. 4, 2018).

³⁵ Petition at 27.

³⁶ 47 U.S.C. § 310(d).

³⁷ See *Progeny 2023 Order*, 38 FCC Rcd at 2357, para. 34.

restrictions on real-time interconnection obligations, services that may be provided, and the amount of M-LMS spectrum that a licensee can hold.³⁸ We seek comment on NextNav's proposed "provisional" rules.³⁹ Do they provide sufficient protection for incumbent operations while enabling the proposed PNT services and contemplated broadband operations by wireless providers, however authorized? Are NextNav's proposed rule changes (e.g., permissible communications) and the addition of fixed and mobile allocations sufficient to authorize proposed TPNT operations and 5G broadband by other mobile service providers not offering TPNT services? Are additional rule changes needed to authorize operations and clarify the scope of services to be offered? What performance requirements would be necessary, considering the proposed operations, to ensure intensive use of the spectrum, and thereby fulfill the Commission's obligations under the Act?

In addition, NextNav proposes to exchange its existing restrictive part 90 licenses for a single, nationwide license to be operated under flexible use rules including, under proposed rule section 90.1403, being able to provide "any services" for which the band is to be allocated, i.e., fixed and mobile services.⁴⁰ If such a nationwide flexible use license were ultimately issued in a newly reconfigured Lower 900 MHz Band as NextNav proposes, should the Commission adopt regulations, or impose license conditions, to ensure that a terrestrial PNT system complementing GPS is permanently implemented and maintained on a nationwide basis? Further, as noted, NextNav is required through license conditions to assist wireless carriers in the deployment of z-axis technology to meet E911 indoor location accuracy requirements. We seek comment on the appropriate scope of flexible use operations in a newly reconfigured Lower 900 MHz Band and on the impact that the proposed mobile network operator (MNO) partnerships might have on public safety. We also seek comment on the appropriate service obligations of any MNO partners, which under the proposed definition would not appear to be "TPNT licensees" offering PNT related services.

Finally, we seek comment on the windfall that NextNav might receive as a result of its proposed spectrum swap for a new nationwide license, including the acquisition of accompanying rights as a licensee and lessor, the application of flexible use and less restrictive technical rules to this band, and how the Commission should address any such windfall.

For this proceeding, we assign a rulemaking number, as is typically assigned to petitions for rulemaking, and also open a docket.

Filing Requirements. Interested parties may file comments and reply comments on or before the dates indicated above and must reference WT Docket No. 24-240. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁴¹

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- *Paper Filers:* Parties filing by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050

³⁸ Petition at 29.

³⁹ See *id.* at A-2–A-11.

⁴⁰ See *id.* at A-9.

⁴¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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 and Governmental Affairs Bureau at 202-418-0530 (voice).

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴² Additionally, the Application to assign licenses from Telesaurus to Progeny, File No. 0011022019, shall be treated as a “permit-but-disclose” proceeding.⁴³ This Application also seeks permission, in an attachment, to assign 128 terminated licenses from Skybridge and one terminated license from Telesaurus to Progeny.⁴⁴ The Application also includes a request for waiver of section 90.353(d) of the Commission’s rules,⁴⁵ which prohibits an entity from holding A Block M-LMS licenses with B and C Block M-LMS licenses in the same license area.⁴⁶ Further, the 128 active licenses listed on the Application⁴⁷ have renewal applications that are pending. These renewal applications shall also be treated as a “permit-but-disclose” proceeding. Additionally, the proceeding that terminated the 128 Skybridge licenses and one Telesaurus license, WT Docket No. 16-385, shall continue to be treated as a permit-but-disclose proceeding.⁴⁸

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

⁴² See 47 CFR § 1.1200 *et seq.*

⁴³ Application to Assign Licenses from Telesaurus GB LLC to Progeny LMS, L.L.C., File No. 0011022019 (Apr. 16, 2024), <https://appsint.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=14686940> (Application).

⁴⁴ Application, Description, PIS, and Waiver Request at 2–3, <https://appsint.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1368470315&attachmentKey=21960417&attachmentInd=applAttach> (Application, Description).

⁴⁵ 47 CFR § 90.353(d).

⁴⁶ Application, Description, at 3–4.

⁴⁷ Application, Form 603, Licenses, <https://appsint.fcc.gov/UlsApp/ApplicationSearch/applLicenses.jsp?applID=14686940>.

⁴⁸ *Applications 2017 Order*, 32 FCC Rcd 9458 (terminating the licenses); *Wireless Telecommunications Bureau Seeks Comment on Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, & Telesaurus Holdings GB LLC Requests for Multilateration Location and Monitoring Service Waiver and Construction Extensions*, WT Docket No. 16-385, Public Notice, 31 FCC Rcd 12450, 12451 (WTB MD 2016), <https://www.fcc.gov/ecfs/document/111074348637/2> (stating that the proceeding shall be “permit-but-disclose”).

be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules. Participants whose presentations include a discussion of the Application to assign licenses to Progeny, the renewal of Telesaurus licenses, and/or the termination of Skybridge and Telesaurus licenses, must also file a copy of any written presentation or a memorandum summarizing any oral presentation in File No. 0011022019 in ULS, File No. 0008711633 in ULS, and/or WT Docket No. 16-385 through the electronic comment filing system, respectively.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For further information regarding this Public Notice, please contact Melissa Conway, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, at Melissa.Conway@fcc.gov or Jamison Prime, Associate Chief, Office of Engineering and Technology, at Jamison.Prime@fcc.gov.

– FCC –

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

In the Matter of	)	
	)	
Federated Wireless Expedited Request for	)	GN Docket No. 15-319
Emergency Waiver of Citizens Broadband Radio	)	
Service Incumbent Protection Rules	)	

ORDER

Adopted: August 6, 2024

Released: August 6, 2024

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau), Mobility Division, conditionally grants Federated Wireless' (Federated 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 Federated requests that the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve them of the requirement for Environmental Sensing Capabilities (ESCs) 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 Tropical Storm Debby, including DPAs E1, E2, E9, E10, E11, E12, E19, E20, and E21 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Tropical Storm Debby made landfall on the Coast of Florida on Sunday, August 4, 2024, bringing with it intense winds, heavy rainfall, and dangerous storm surge conditions.³ 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.⁴ 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.⁵ Access and

¹ See Federated Wireless Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed August 5, 2024) (Waiver Request), <https://www.fcc.gov/ecfs/document/10805842201949/1>.

² 47 CFR § 96.67(c)(2)-(3).

³ See Waiver Request at 1; National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Tropical Storm Debby Advisory 13, 11:00 AME EDT Mon Aug 5, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?key_messages; see also President Joseph R. Biden, Jr., Approves Florida Emergency Declaration (August 4, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/08/04/president-joseph-r-biden-jr-approves-florida-emergency-declaration-7/>.

⁴ 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*).

⁵ *Id.*

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. In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.⁶

3. Federated seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve it 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.⁷ This waiver would allow Federated 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 Tropical Storm Debby. Federated seeks a waiver of these requirements in the interest of providing uninterrupted service to thousands of Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to millions of customers in areas that have been impacted by Tropical Storm Debby.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. Federated asserts that "the intense winds and rainfall could cause widespread power outages."¹¹ If such outages occur, the Impacted Systems will lose commercial power and will be unable to operate normally.¹² Federated also asserts that the availability of backhaul may also be impacted.¹³ Federated contends that these power outages may cause DPAs in the affected areas to be activated, impacting approximately 7,000 CBSDs, potentially disconnecting millions of customers—including consumer, residential and enterprise customers, schools, and oil and gas companies—from critical broadband, voice, and data services.¹⁴ According to Federated, "[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,

⁶ 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).

⁷ 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).

⁸ See Waiver Request at 1-2.

⁹ 47 CFR § 1.925(b)(3).

¹⁰ 47 CFR § 1.3.

¹¹ See Waiver Request at 1.

¹² See *id.*

¹³ *Id.*

¹⁴ *Id.* at 1-2.

such as water and electricity.”¹⁵ 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 Beryl, Ian, and Fiona, Typhoon Mawar, and Tropical Storms Nicole and Idalia,¹⁶ to allow the Federated SASs to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate their ESCs from the 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 SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either August 20, 2024, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Federated 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 Tropical Storm Debby, 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 request 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

¹⁵ *Id.* at 2.

¹⁶ 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); *Google LLC’s Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 23-789 (rel. Aug. 30, 2023); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-652 (rel. July 8, 2024); *Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-677 (rel. July 12, 2024).

§§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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

In the Matter of	)	
	)	
Intelsat License LLC,	)	File No.: EB-SED-23-00035921
An indirect, wholly owned subsidiary of	)	CD Acct. No.: 202432100006
Intelsat S.A., Luxembourg,	)	FRN: 0029579331
Licensee of Station S3143	)	

ORDER

Adopted: August 12, 2024**Released: August 12, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree with Intelsat License LLC (Intelsat) to resolve the Bureau's investigation into whether Intelsat violated the Commission's rules related to the unauthorized operation of a space station. In the complex environment in which satellites operate, a space station licensee's failure to adhere to the Commission's rules and to the terms of an authorization can significantly impair the Commission's ability to evaluate and coordinate space station operations and could also increase the risk of collisions with other objects in orbit or of harmful interference to other authorized communications systems. Therefore, it is important for the Commission to hold satellite licensees accountable for failures to operate within the parameters of an authorization. To settle this matter, Intelsat admits that it violated the Communications Act of 1934, as amended (Act),¹ and the Commission's rules by deploying its Galaxy 35 satellite to an unauthorized orbital location. Intelsat has agreed to implement a three-year compliance plan and will pay a \$160,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Intelsat's compliance with its obligations under section 301 of the Act and section 25.102 of the Commission's rules.²

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

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

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

¹ 47 U.S.C. § 151 *et seq.*

² *Id.* § 301; 47 CFR § 25.102.

³ *See* 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for Intelsat License LLC, Joshua Turner, Wiley Rein LLP, 2050 M Street NW, Washington DC, 20036, and to W. Ray Rutngamlug, Associate General Counsel, and Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, 7900 Tysons One Place, McLean VA, 22102-5972.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Intelsat License LLC,	)	File No.: EB-SED-23-00035921
An indirect, wholly owned subsidiary of	)	CD Acct. No.: 202432100006
Intelsat S.A., Luxembourg,	)	FRN: 0029579331
Licensee of Station S3143	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Commission or FCC) and Intelsat License LLC (Intelsat or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's (Bureau) investigation into whether Intelsat violated section 301 of the Communications Act of 1934, as amended (the Act), and section 25.102 of the Commission's Rules.¹ To resolve this matter, Intelsat agrees to the terms and conditions of this Consent Decree, including an admission of liability, agrees to implement a Compliance Plan, and pay a \$160,000 civil penalty.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "CD Acct No." means account number 202432100006, associated with payment obligations described in paragraph 20 of this Consent Decree.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Company is subject by virtue of its business activities, including but not limited to the Satellite Rules.
 - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
 - (h) "Covered Employees" means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of duties that relate to: (1) satellite maneuvers, including without limitation deployment, migration, and orbital positioning (e.g., station-keeping and decommissioning); or (2) the submission of

¹ 47 U.S.C. § 301; 47 CFR § 25.102.

² 47 U.S.C. § 151 *et seq.*

information to the Commission concerning space or associated earth stations, including without limitation applications for station authorization, the submission of other material information regarding orbital location and operations, and any other filings required under the Communications Laws.

- (i) “Effective Date” means the date by both the Commission and the Company have signed the Consent Decree and the Commission has adopted it.
- (j) “Intelsat” or “Company” means Intelsat License LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-SED-23-00035921 regarding whether Intelsat operated its Galaxy 35 satellite (S3143) at variance from its authorization.
- (l) “Operating Procedures” means the internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.
- (m) “Parties” means the Company and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Satellite Rules” means section 301 of the Act and section 25.102 of the Rules and other Communications Laws relating to satellite operations, including earth station operations and radio frequency device operations.

II. BACKGROUND

3. The Act and the Rules require that licensees operate in accordance with the terms of an authorization. Section 301 of the Act states that, with respect to spectrum licenses issued by the Commission, “no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license.”³ Section 25.102 of the Rules similarly provides that “[n]o person shall use or operate apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission.”⁴ This important rule helps to prevent interference in satellite operations and allows the Commission to coordinate and evaluate those operations, including minimizing the risks of collision. Licensees of earth stations and space stations (satellites) must obtain authorization from the Commission and may only operate in strict accordance with the authorization. The Satellite Rules allow the Commission to coordinate and evaluate those operations and thus reduce the potential for harmful interference, while maximizing the availability of scarce satellite spectrum.

4. Intelsat, a privately held company headquartered in Virginia, is an indirect, wholly owned subsidiary of parent company Intelsat S.A., organized in Luxembourg. As a major provider of satellite-based communications services, Intelsat operates earth stations and orbiting satellites and holds hundreds of Commission licenses.

5. In April 2022, Intelsat requested authority to construct, deploy, and operate its Galaxy 35 satellite (call sign S3143) to provide Fixed Satellite Service on a noncarrier basis at the 95.15° W.L. orbital location.⁵ In October 2022, Intelsat amended the pending application for Galaxy 35 and instead sought authority to deploy this satellite at 95.05° W.L.⁶ The Satellite Division of the International

³ *Id.* § 301.

⁴ 47 CFR § 25.102.

⁵ *Intelsat License LLC*, Application for Authority to Launch and Operate Galaxy 35, a Replacement Satellite, at 95.15° W.L., ICFS File No. SAT-RPL-20220414-00041 (filed Apr. 14, 2022).

⁶ *See* ICFS File No. SAT-AMD-20221006-00129 (filed Oct. 6, 2022).

Bureau⁷ granted Intelsat's application and amendment to deploy the satellite at 95.05° W.L.⁸ Galaxy 35 was launched on December 13, 2022, arrived at an approved in-orbit test location on December 22, 2022, and completed its testing on February 7, 2023.

6. Intelsat obtained special temporary authority to conduct telemetry, tracking and command (TT&C) transmissions while Galaxy 35 drifted from its in-orbit test location toward its authorized location of 95.05° W.L.⁹ In a request for further special temporary authority to drift Galaxy 35, Intelsat incorrectly advised the Commission that the satellite was then being drifted toward its authorized location, which was 95.05° W.L.¹⁰ However, Intelsat was in fact drifting Galaxy 35 toward 94.85° W.L. Galaxy 35 arrived at the orbital location of 94.85° W.L. on March 12, 2023, but Intelsat notified the Commission that it had arrived at its authorized location of 95.05° W.L.¹¹

7. On April 13, 2023, Intelsat disclosed its error to the International Bureau and sought temporary authority to conduct TT&C transmissions from the unauthorized location of 94.85° W.L.¹² The Bureau's Spectrum Enforcement Division issued a Letter of Inquiry (LOI) to the Company regarding the deployment and operation of Galaxy 35, to which the Company responded in full.¹³

8. In response to the LOI, Intelsat stated that it "followed its standard interference coordination and [space situational awareness] protocols and communicated data to key stakeholders during Galaxy 35's drift to, and deployment at, 94.85° W.L."¹⁴ The satellite did not transmit data in the Fixed Satellite Service. However, contrary to its authorization, Intelsat conducted TT&C transmissions both during and following Galaxy 35's drift toward an unauthorized orbital location.

⁷ In April 2023, the FCC reorganized the functions of the Satellite Division in the FCC's former International Bureau (IB) and established a new stand-alone bureau, the Space 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 Managing Director*, MD Docket No. 23-12, Order, 38 FCC Rcd 608 (2023).

⁸ *See Intelsat License LLC*, Application for Authority to Launch and Operate Galaxy 35, a Replacement Satellite, at 95.15° W.L., ICFS File Nos. SAT-RPL-20220414-00041, SAT-AMD-20221006-00129 (granted Dec. 8, 2022).

⁹ *See Intelsat License LLC*, Request for Further Extension of Special Temporary Authority to Drift Galaxy 35 to 95.05° W.L., ICFS File No. SAT-STA-20230221-00037 (granted Mar. 2, 2023); *Intelsat License LLC*, Request for Extension of Special Temporary Authority to Conduct In-Orbit Testing of Galaxy 35 at 150.05° W.L. and Drift the Satellite to 95.05° W.L., ICFS File No. SAT-STA-20230120-00005 (granted Feb. 2, 2023). TT&C transmissions, which are used in part to monitor the satellite's positioning, are conducted almost continuously during a satellite's journey from launch through deployment at an authorized orbital location.

¹⁰ *See Intelsat License LLC*, Request for Further Extension of Special Temporary Authority to Drift Galaxy 35 to 95.05° W.L., ICFS File No. SAT-STA-20230221-00037 (granted Mar. 2, 2023).

¹¹ *See Intelsat License LLC*, Notice of Commencement of Operations for Galaxy 35, ICFS File No. SAT-RPL-20220414-00041 (filed Mar. 15, 2023).

¹² *See Intelsat License LLC*, Request for Special Temporary Authority for Galaxy 35, SAT-STA-20230413-00087 (filed Apr. 13, 2023). At present, that request remains pending with pending with the Space Bureau. Intelsat subsequently sought and received STA to relocate Galaxy 35 to 93.1° W.L., where it currently operates. *See Intelsat License LLC*, Request for 60 Days of Special Temporary Authority to Operate Galaxy 35 at 93.1° W.L., ICFS File No. SAT-STA-20230518-00114 (granted May 25, 2023); Request for Further Extension of 60-day Special Temporary Authority to Operate Galaxy 35 at 93.1° W.L., ICFS File No. SAT-STA-20240515-00103 (granted May 22, 2024).

¹³ *See Letter of Inquiry from FCC Spectrum Enforcement Bureau, to Intelsat US LLC* (Dec. 12, 2023) (on file in EB-SED-23-00035921) (LOI); *Response to Letter of Inquiry, from Intelsat License LLC, to FCC* (Feb. 15, 2024) (on file in EB-SED-23-00035921) (LOI Response).

¹⁴ LOI Response at 8, Response to Inquiry 9. These communications included notifications and daily ephemeris data to the U.S. Space Force, including the Combined Space Operations Center. *Id.*

9. The Company and the Bureau subsequently engaged in settlement negotiations. To resolve this matter, the Bureau and Intelsat enter into this Consent Decree and agree to the terms and conditions set forth below.

III. TERMS OF AGREEMENT

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

11. **Jurisdiction.** The Company 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.

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

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Intelsat concerning the matters that were the subject of the Investigation, or to set for hearing the question of the Company's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹⁵

14. **Admission of Liability.** Intelsat admits solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that its actions described above in paragraphs 5 through 8 violated the Satellite Rules.

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

16. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Satellite Rules, the Company will implement, at a minimum, the following procedures.

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

¹⁵ See 47 CFR § 1.93(b).

- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Satellite Rules and requirements and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Satellite Rules. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the Satellite Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the Satellite Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

17. **Reporting Noncompliance.** The Company shall report any noncompliance with the Satellite Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, via EB-SED-Response@fcc.gov.

18. **Compliance Reports.** The Company shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Satellite Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the

Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁶

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

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Civil Penalty.** The Company will pay a civil penalty to the United States Treasury in the amount of one hundred and sixty thousand dollars (\$160,000) within thirty (30) days of the Effective Date. The Company acknowledges and agrees that upon execution of this Consent Decree, the civil penalty payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹⁷ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. The Company shall send electronic notification of payment to the Spectrum Enforcement Division’s mailbox at EB-SED-Response@fcc.gov on the date said payment is made. Payment of the civil penalty must be made by credit card using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts civil penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159¹⁹ or printed CORES form²⁰ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username

¹⁶ *Id.* § 1.16.

¹⁷ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

¹⁹ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁰ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

²¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.

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

21. **Event of Default.** Intelsat agrees that an Event of Default shall occur upon the failure by the Company to pay the full amount of the civil penalty on or before the due date specified in this Consent Decree.

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

23. **Waivers.** As of the Effective Date, the Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²² relating to the matters addressed in this Consent Decree.

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

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

²² See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

26. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Company does not expressly consent) that provision will be superseded by such Rule or order.
27. **Successors and Assigns.** The Company agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.
28. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.
29. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.
30. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
31. **Authorized Representative.** Each Party represents and warrants to the others that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.
32. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Michelle Bryan
General Counsel
Intelsat US LLC

Date

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

In the Matter of	)	File No.: EB-IHD-21-00032600
	)	NAL/Acct. No.: 202432080026
Audacy License, LLC, Debtor-in-Possession	)	FRN: 0034767822
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 9, 2024**Released: August 9, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$14,000 against Audacy License, LLC, Debtor-in-Possession (Licensee), for failing to conduct a contest in accordance with its announced terms and thus apparently violating the Federal Communications Commission's (FCC or Commission) contest regulations (Contest Rule). The Commission's contest regulations require that licensees fully and accurately disclose material contest terms and conduct contests substantially as announced or advertised. Here, the Licensee's announced contest terms (Contest Terms) specified when winners would be selected and when winners would be notified of their selection. Despite being required by its own Contest Terms to (i) select winners on or about the next business day following each contest day, and (ii) notify winners within 72 business hours of being selected, the Licensee frequently failed to adhere to those deadlines. In proposing this penalty, we reiterate the Commission's longstanding commitment to protecting the public from deceptive broadcast contests.

II. BACKGROUND

2. *Legal Background.* Under section 73.1216 of the Commission's rules, broadcast licensees must "fully and accurately disclose the material terms" of a licensee-conducted contest and conduct it "substantially as announced or advertised."¹ Material terms include: "eligibility restrictions"; "the extent, nature, and value of prizes"; and "time and means of selection of winners."² Prizes "must be awarded promptly,"³ and the Commission or Enforcement Bureau (EB or Bureau) has consistently and repeatedly found a Contest Rule violation where a broadcast station failed to provide prizes consistent with the station's announced contest terms.⁴

¹ 47 CFR § 73.1216(a); *see also KXOL Licensing, Inc., Licensee of Station KXOL-FM, Los Angeles, CA*, Notice of Apparent Liability for Forfeiture, DA 24-348, 2024 WL 1635371, at *1, para. 2 (EB 2024) (*KXOL*) (forfeiture paid); *Boonville Broadcasting Company, Inc. Licensee of Station WEJK(FM), Boonville, Indiana*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2845, 2849-52, paras. 11-14 (EB 2014) (deeming radio licensee apparently liable for failure to conduct a contest substantially as announced) (forfeiture paid).

² 47 CFR § 73.1216(b); *see also Clear Channel Communications, Inc., et al.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 345, para. 5 (EB 2012) (*Clear Channel*) (citing 47 CFR § 73.1216) (forfeiture paid); *KXOL*, *supra* note 1, at *1, para. 2.

³ *Gow Media, LLC Licensee, of Station KFNC(FM), Mont Belvieu, TX*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6272, 6272-73, para. 2 (EB 2020) (*Gow Media*) (forfeiture paid); *see also KXOL*, *supra* note 1, at *1, para. 2.

⁴ *See, e.g., Multicultural Radio Broadcasting Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21555, 21560, para. 8 (EB 2007) (*Multicultural Radio*) (finding that licensee violated section 73.1216 in part by (continued....))

3. *Factual Background.* On April 5, 2021, the Commission received a Complaint alleging that one of the Licensee's commercial broadcast radio stations had not conducted a contest in a manner substantially as announced and advertised.⁵ EB issued a Letter of Inquiry investigating the Complaint on August 23, 2021.⁶ The Licensee submitted its timely response on November 12, 2021.⁷

4. In its LOI Response, the Licensee provides the following information. The Complaint concerns the Licensee's 2021 Q1/Q2 "National Cash Contest" (Contest), which was conducted on 27 weekdays from March 11 through April 16, 2021, on 194 stations licensed to the Licensee.⁸ Once per hour from 7 a.m. to 5:59:59 p.m. local time (i.e., 11 times per Contest day), each of the Licensee's stations participating in the Contest announced a Contest keyword. Listeners could submit Contest entries either by texting that keyword to the specified shortcode number or by submitting the keyword via the internet by the end of the hour in which the keyword was announced. One national winner was to be selected randomly from each hour's eligible entries from all participating stations, for a total of 297 (27 x

awarding prizes to ineligible parties) (forfeiture paid); *see also KXOL, supra* note 1, at *1, para. 2; *id.* at *2, para. 8 (finding that licensee's "failure to issue the Complainant's prize within the time period required by its announced Contest Terms is an apparent willful violation of section 73.1216"); *Gow Media, supra* note 3, at 6274, para. 6 (finding that licensee's failure to award the contest prize "in a timely manner constitutes a failure to conduct the Contest substantially as announced, in apparent violation of section 73.1216"); *Saga Communications of New England, L.L.C., Forfeiture Order*, 24 FCC Rcd 11934, 11936-37, paras. 7-8 (EB 2009) (*Saga Communications*) (finding that failure to convey an award within the timeframe specified in the contest's rules constitutes a failure to conduct a contest substantially as announced or advertised, in violation of section 73.1216 of the Commission's rules), *recons. denied*, Memorandum Opinion and Order, 25 FCC Rcd 3289 (EB 2010), *review denied*, Order on Review, 26 FCC Rcd 16678 (2011), *settled sub nom. United States v. Saga Communications of New England, LLC*, Settlement and Dismissal Agreement and Stipulated Order of Dismissal with Prejudice, Civil Action No. 10-12407 (E.D. Mich. Apr. 4, 2012).

⁵ Complaint No. 4689654-1 (Apr. 5, 2021) (on file in EB-IHD-21-00032600) (Complaint).

⁶ Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Audacy License, LLC. (Aug. 23, 2021) (on file in EB-IHD-21-00032600) (LOI). Although the LOI was sent to Audacy License, LLC, this NAL concerns Audacy License, LLC, Debtor-in-Possession. This is because in 2024 the ultimate parent of Audacy License, LLC – Audacy, Inc. -- filed for Chapter 11 bankruptcy. *See In re Audacy, Inc. et al.*, Case No 24-90004 (CML) (Bank. S.D. Tex.) and jointly administered cases. In connection with such bankruptcy proceeding, the Commission granted on February 14, 2024 an application requesting Commission consent to (1) the involuntary *pro forma* transfer of control of Audacy License, LLC from Audacy, Inc. to Audacy, Inc., Debtor-in-Possession, and (2) the involuntary *pro forma* assignment of the radio broadcast licenses held by Audacy License, LLC from Audacy License, LLC to Audacy License, LLC, Debtor-in-Possession. *See* <https://enterprise.filing.fcc.gov/dataentry/views/public/assignmentDraftCopy?displayType=html&appKey=25076f918ce993ea018ce9a78710005e&id=25076f918ce993ea018ce9a78710005e&goBack=N> (last visited July 15, 2024).

⁷ *See* Response to Letter of Inquiry from Suzanne M. Tetreault, Wilkinson Barker Knauer, LLP, Counsel for Audacy License, LLC, to Sekoia Rogers Diggs, et al., Investigations and Hearings Division, Enforcement Bureau, FCC (Nov. 12, 2021) (including a Request for Confidentiality) (on file in EB-IHD-21-00032600) (LOI Response); Letter from Suzanne M. Tetreault, Wilkinson Barker Knauer, LLP, Counsel for Audacy License, LLC, to Patrick McGrath, et al., Investigations and Hearings Division, Enforcement Bureau, FCC (Mar. 6, 2024) (on file in EB-IHD-21-00032600) (Amended Request for Confidential Treatment). This NAL does not disclose material identified as confidential in the LOI Response and in the Amended Request for Confidential Treatment, and we defer ruling on the Amended Request for Confidential Treatment unless and until necessary. *See* 47 CFR § 0.459(d)(3) (providing that the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461; such material will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted).

⁸ *See, e.g.,* LOI Response, *supra* note 7, at 1-3; *id.* at Inquiry 4 Document Production (Contest Terms), Attachment A (listing participating stations) (all on file in EB-IHD-21-00032600). When the Contest began, the Licensee was known as Entercom. On March 30, 2021, the Licensee rebranded from Entercom to Audacy. LOI Response, *supra* note 7, at 3 n.12.

11) opportunities to win.⁹ Each winner was to receive a check for \$1,000.¹⁰ In other words, the Licensee would select “up to” 297 potential winners to receive the \$1,000 prize, subject to the verification of eligibility and compliance with the Contest Terms.¹¹

5. The Licensee was supposed to select randomly one entry as a potential winner from all nationwide eligible entries for each respective Contest time slot “[on] or about the next business day following each Contest Day.”¹² Next, “[p]otential winners w[ould] be notified ... within seventy-two (72) business hours of being selected.”¹³ Prizes were then to be mailed out within eight to twelve weeks of the Licensee’s timely receipt of all required documents and information from the verified winner.¹⁴

6. However, in reviewing the Contest both in connection with the LOI and as part of an after-action internal review of the Contest, the Licensee asserts that it discovered that human error affected the operation of the Contest. Specifically, the Licensee says it determined that: (i) in some instances, a part-time employee charged with selecting winners never did so; (ii) the part-time employee’s manager had not provided proper oversight to ensure that all winners had been selected in a timely manner; and (iii) some of the selected winners had not been notified of their selection.¹⁵ Licensee acknowledges that, due to those omissions, the Licensee did not act timely in selecting and/or notifying 50 winners out of the 297 time slots, which is 16.8% of the potential winners.¹⁶

7. In response to those failures to select and/or notify Contest winners in a timely manner, the Licensee took measures in October and November of 2021 to select, notify, and award “replacement” Contest winners *after* receiving the LOI on August 23, 2021.¹⁷ As of the date of the LOI Response (i.e., November 12, 2021), the Licensee had selected and notified potential winners for all 297 Contest hours, and all prizes had been awarded to all eligible winners who had submitted the required paperwork.¹⁸

III. DISCUSSION

A. The Licensee Apparently Violated the Commission’s Licensee-Conducted Contest Rule

8. We find that the Licensee apparently willfully violated section 73.1216 of the Commission’s rules by failing to select and/or notify winners in a timely manner pursuant to the

⁹ See, e.g., LOI Response, *supra* note 7, at 1-6, 9.

¹⁰ See, e.g., LOI Response, *supra* note 7, at 4; *id.* at Contest Terms, *supra* note 8, at para. 6.

¹¹ See, e.g., LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at paras. 5(a)-(b), 6-7; LOI Response, *supra* note 7, at 15-16. The Licensee labeled winners as “potential winners” until they completed the steps required in the Contest Terms to receive the \$1,000. See, e.g., LOI Response, *supra* note 7, at 3-5; *id.* at Contest Terms, *supra* note 8, at paras. 7-8. The record contains no suggestion of any issues concerning this aspect of the Contest.

¹² LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5 (emphasis added). See, e.g., LOI Response, *supra* note 7, at 5. As mentioned previously, the eligible entries comprised a selection pool involving all of the Licensee’s 294 stations nationwide.

¹³ LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5 (emphasis added).

¹⁴ LOI Response, *supra* note 7, at 5, 14; LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 6.

¹⁵ See, e.g., LOI Response, *supra* note 7, at 2, 5-6, 15-16.

¹⁶ See, e.g., LOI Response, *supra* note 7, at 2, 5-6, 15-16; LOI Response, *supra* note 7 at Attachment 3 (responsive to Inquiry 3) (on file in EB-IHD-21-00032600) (Contest Winner List).

¹⁷ See, e.g., LOI Response, *supra* note 7, at 2, 2 n.11, 4-5, 15-16.

¹⁸ See, e.g., LOI Response, *supra* note 7, at 2, 2 n.11, 4-5, 15-16; *id.* at Contest Winner List, *supra* note 16. According to the Licensee, as of the date of the LOI Response, three of the potential winners who were newly selected and notified as part of the Licensee’s mitigation efforts had forfeited their prize eligibility due to documentation problems, and the status of a fourth such potential winner remained uncertain, for the same reason. LOI Response, *supra* note 7, at 2 n.11, 5.

Licensee's announced Contest Terms, and thus failed to conduct its contest "fairly and substantially as represented to the public."¹⁹ Here, as our precedent holds, "timely fulfillment of the prize" was a "material term of the Licensee's own contest rules,"²⁰ as demonstrated by the fact that the Contest Terms set forth specific deadlines for the Licensee to select and notify prize winners.²¹ The Licensee admits that on 50 occasions, it either failed to select a winner until after receiving the LOI²² or did select a winner but then failed to notify the selected winner until after receiving the LOI.²³ The failure to select some winners until after receiving the LOI violates the Contest Term requiring such selection by the next business day; and the failure to notify some winners until after receiving the LOI violates the Contest Term requiring such notification with 72 hours of selection.

9. The Licensee proffers four arguments why its failure to select and/or notify winners in a timely manner in accordance with its Contest Terms should not constitute a violation of section 73.1216 of the Commission's rules: (i) the volume of selection/notification failures is insubstantial compared to the scope of the Contest;²⁴ (ii) the Contest Terms contemplated and allowed selection/notification omissions by only requiring the Licensee to select "a total of up to, but not more than," 297 verified winners;²⁵ (iii) the selection/notification failures derived from the poor performance of two employees, not from deliberant omissions;²⁶ and (iv) the Licensee went to great lengths — even beyond the Contest Terms' requirements — to mitigate its selection/notification failures, and by doing so the Licensee ultimately awarded prizes relating to virtually all 297 opportunities to win.²⁷ For the following reasons, the Licensee's arguments are not persuasive.

¹⁹ *Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly*, Public Notice, 45 FCC 2d 1056, 1056 (1974) (*Contest Public Notice*).

²⁰ *Gow Media*, *supra* note 3, at 6272-73, para. 6.

²¹ *See, e.g.*, LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5 (providing that (i) winners will be selected "[o]n or about the next business day following each Contest Day," and (ii) "[p]otential winners w[ould] be notified ... within seventy-two (72) business hours of being selected").

²² LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5. *See, e.g.*, LOI Response, *supra* note 7, at 2, 5-6, 15, 16 (admitting that "there was some delay beyond what the rules contemplated in selecting some winners for the Contest"); LOI Response, *supra* note 7 at Contest Winner List, *supra* note 16 (identifying a roughly six-month period between the time when a winner should have been selected and when a winner was actually selected).

²³ LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5. *See, e.g.*, LOI Response, *supra* note 7, at 2, 5 (stating that "[w]hile Audacy ultimately identified all Contest winners and awarded prizes to all eligible Contest winners, Audacy recognizes that there were delays in doing so in some cases"), 6, 15-16; LOI Response, *supra* note 7 at Contest Winner List, *supra* note 16 (identifying a roughly six-month period between the time when a winner should have been notified and when a winner was actually notified).

²⁴ *See, e.g.*, LOI Response, *supra* note 7, at 15 (stating that "[t]he overwhelming majority of the Contest winners were selected, and prizes awarded, within the timeframes set out in the rules"), 16 (stating that "[w]hile there was some delay beyond what the rules contemplated in selecting some winners for the Contest, the majority of winners were unaffected...").

²⁵ *See, e.g.*, LOI Response, *supra* note 7, at 15-16 (citing Contest Terms, *supra* note 8, at paras. 5(a), 6, stating that, "[t]here will be up to, but not more than, eleven (11) verified Winners per Contest Day, one (1) verified Winner from each of the up to eleven (11) Contest Entry Periods on each Contest Day, for a total of up to, but not more than, two-hundred ninety-seven (297) verified Winners in this Contest" and "[e]ach verified of the up to two-hundred ninety-seven (297) Winners in this Contest will each receive \$1,000..." (emphasis added)).

²⁶ *See, e.g.*, LOI Response, *supra* note 7, at 2, 5-6, 16.

²⁷ *See, e.g.*, LOI Response, *supra* note 7, at 1-2, 4-6, 15-16. As previously noted, according to the Licensee, as of the date of the LOI Response, three of the potential winners who were newly selected and notified as part of the Licensee's mitigation efforts had forfeited their prize eligibility due to documentation problems, and the status of a fourth such potential winner remained uncertain, for the same reason. LOI Response, *supra* note 7, at 5.

10. First, the volume of selection/notification failures is far from insubstantial.²⁸ Indeed, because those failures involved a pool of potential winners from all of the Licensee's participating stations nationwide, affected *at least* 16.8% of the prizes to be awarded,²⁹ and resulted in selection/notification delays of approximately six months,³⁰ those failures preclude a finding that the Licensee conducted the Contest "substantially as announced or advertised" under section 73.1216(a) of the Commission's rules.³¹ Second, although the Contest Terms speak in terms of the Licensee selecting "up to" 297 winners, those Terms – read reasonably and in context – do not contemplate allowing the Licensee to select fewer than 297 verified winners due to its own employees' negligence.³² Third, under well-established precedent, the Licensee cannot escape liability merely because the misconduct arose from its employees' poor performance.³³ Fourth, the Licensee's remedial efforts occurred only after receiving the Commission's LOI, and such post-LOI remedial efforts do not mitigate its liability.³⁴

11. In sum, the record compels a finding that the Licensee apparently failed to: (i) select potential Contest winners within the period prescribed by the Contest's Terms, i.e., "on or about the next

²⁸ See, e.g., *KXOL*, *supra* note 1 (finding apparent liability, and proposing a forfeiture of \$8,000, for a single delay in awarding a prize in a contest with 459 winners).

²⁹ We use the phrase "at least," because the record does not permit a determination of the extent to which, if any, the 50 failures identified by the Licensee include both the failures to select a winner and the failures to notify a selected winner. On the one hand, the Licensee states that it failed to "select" 50 winners, LOI Response, *supra* note 7, at 2, and later states that it also failed to "notif[y]" an unspecified number of winners, *id.* at 5, suggesting that the total number of both selection failures and notification failures exceeds 50. On the other hand, the Licensee submitted a list of every individual to whom the Licensee ultimately awarded a prize suggesting that the 50 failures include both all of the selection failures and all of the notification failures. LOI Response, *supra* note 7, at 5, Contest Winner List, *supra* note 16 (identifying a total of 63 "Replacement Winners," 13 of whom were awarded prizes on a "replacement" basis for reasons other than failures to select or notify a winner).

³⁰ As stated earlier, the Contest ran from mid-March 2021 to mid-April 2021, and the Licensee's remediation efforts occurred in October and November 2021.

³¹ 47 CFR § 73.1216(a). Licensee seems to suggest that, to be actionable, failures to abide by contest rules must concern a *much* larger percentage of the total number of prizes won than the 16.8% it acknowledges here. LOI Response, *supra* note 7, at 16 (citing *Multicultural Radio Broadcasting Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21555 (EB 2007), with a parenthetical stating: "notice of apparent liability where licensee affirmatively decided not to give away 60 percent of the announced prizes"). Licensee's suggestion is plainly misguided. See, e.g., *KXOL*, *supra* note 1 (finding apparent liability, and proposing a forfeiture of \$8,000, for a single delay in awarding a prize in a contest with 459 prize winners). Licensee also seems to suggest that, to be actionable, a delay in carrying out a contest must extend *well* beyond the 6 months it acknowledges here. LOI Response, *supra* note 7, at 16 (citing *Gow Media, LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6273 (EB 2020), with a parenthetical stating: "notice of apparent liability where licensee failed to award prize for two years despite many contacts from the winner"). Licensee is again plainly misguided. See, e.g., *Saga Communications*, *supra* note 4, at 11937, para. 8 (holding that a delay almost identical to the delay here – "nearly seven months" – constituted an apparent violation).

³² Instead, the wiggle room permitted by the Contest Terms' allowance of "up to" 297 verified winners is more reasonably read as simply permitting the Licensee to refrain from verifying a winner for a particular time slot if and when a potential winner failed to provide the requisite verification information.

³³ See, e.g., *KXOL*, *supra* note 1, at *4, para. 13 (holding that, "even assuming, *arguendo*, that Licensee's misconduct was inadvertent, negligent, or the result of human error, under pertinent Commission precedent, such factors are neither exculpatory nor mitigating..."); *Gow Media*, *supra* note 3, at 6274, para. 7 (holding that Commission precedent is clear that "neither the improper actions of a licensee's employees nor subsequent remedial actions undertaken by a licensee can excuse or nullify a licensee's rule violation") (citations omitted).

³⁴ See, e.g., *KXOL*, *supra* note 1, at *4, para. 13 n.36 (citing *Saga Communications*, 24 FCC Rcd at 11937, para. 8, for the proposition that subsequent remedial steps are "neither exculpatory nor mitigating"); *Gow Media*, *supra* note 3, at 6274, para. 7 (holding that subsequent remedial actions do not excuse or nullify a licensee's rule violation where licensee did not take steps to resolve violations until after EB's investigation commenced)).

business day following each Contest day”³⁵; and (ii) notify potential winners of their selection within the period prescribed by the Contest’s Terms, *i.e.*, “within seventy-two (72) business hours of being selected.”³⁶ Furthermore, the Licensee’s proffered defenses regarding those failures lack merit. Accordingly, we hold that the Licensee’s conduct constitutes an apparent willful violation of the requirement of section 73.1216 of the Commission’s rules to conduct the Contest “substantially as announced or advertised.”³⁷

B. Proposed Forfeiture

12. Section 503(b) of the Communications Act of 1934, as amended, (Act) authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]”³⁸ Here, section 503(b)(2)(A) of the Act authorizes us to assess a forfeiture against the Licensee of up to \$61,238 per violation or for each day of a continuing violation, up to a statutory maximum of \$612,395 for a single act or failure to act.³⁹

13. In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁴⁰ To facilitate such consideration, the Commission has established forfeiture guidelines that, among other things, establish base penalties for certain violations and identify criteria we consider when determining the appropriate penalty in any given case.⁴¹ In particular, under these guidelines, we may adjust a forfeiture upward from the base penalty based both on the nature of the violation – such as whether it is egregious, intentional, repeated/continuous, substantially harmful, or the source of substantial economic gain for the violator – and on the circumstances of the violator – such as the ability to pay and any prior violations of Commission rules.⁴² We may also adjust a forfeiture downward from the base penalty for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁴³

14. Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$4,000 for a violation pertaining to licensee-conducted contests for each violation or each day of a continuing violation.⁴⁴ As

³⁵ LOI Response, *supra* note 7, at Contest Terms, *supra* note 8, at para. 5.

³⁶ *Id.*

³⁷ See 47 CFR § 73.1216(a).

³⁸ 47 U.S.C. § 503(b)(1)(B).

³⁹ *Id.* § 503(b)(2)(A); 47 CFR § 1.80(b)(1). See *Amendment of Section 1.80(b) of the Commission’s rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the adjustments).

⁴⁰ 47 U.S.C. § 503(b)(2)(E); see also 47 CFR § 1.80(b)(11).

⁴¹ 47 CFR § 1.80(b)(11), Tables 1 and 3 to paragraph (b)(11); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 20 (1997) (noting that even in instances where the “type of violation is the same, each case will present its own unique facts”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁴² 47 CFR § 1.80(b)(11), Table 3.

⁴³ *Id.*

⁴⁴ *Id.* § 1.80(b)(11), Table 1.

noted above, however, we have discretion to depart from the base forfeiture amount, taking into account the particular facts of each individual case.⁴⁵

15. In this matter, we assess a single violation related to the Licensee's apparent breach of section 73.1216 of the Commission's rules based on its failure to conduct the Contest substantially as announced and advertised, because it did not select and/or notify winners within the timeframes set forth in announced Contest Terms.⁴⁶ Accordingly, we propose a total base forfeiture of \$4,000.

16. In addition, given the totality of the circumstances, and consistent with section 503(b)(2)(E) of the Act, section 1.80(b)(11) of the Commission's rules, and the *Forfeiture Policy Statement*, we conclude that upward adjustments to the base forfeiture are warranted. Specifically, the Licensee conducted the Contest on 194 of its stations nationwide, for 27 weekdays, with 297 opportunities to win. The Licensee failed to select and/or notify at least 16.8% of the winners in a timely manner in accordance with the Contest Terms, which affected at least 50 listeners of various Licensee stations. Moreover, those failures caused award delays of approximately six months. When combined, these facts constitute sufficiently substantial harm to warrant an upward adjustment of \$8,000.⁴⁷ Moreover, the Licensee (and its predecessor entities) committed prior violations of Commission rules,⁴⁸

⁴⁵ See, e.g., *Forfeiture Policy Statement*, *supra* note 41, at 17098–99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”); *KXOL*, *supra* note 1, at *3, paras. 9-10.

⁴⁶ See generally *South Central Communications Corporation, Licensee of Stations WIKY-FM, Evansville, Indiana; WABX(FM), Evansville, Indiana; WLFW(FM), Chandler, Indiana; & WSTO(FM), Owensboro, Kentucky*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2855, 2860-61, para. 14 (EB 2014) (*South Central Comm.*) (finding the ultimate parent company, South Central Communications Corporation, apparently liable for a single contest rule violation associated with a national contest that ran on four of its radio stations, and upwardly adjusting the proposed forfeiture due to the multiple stations involved); *Clear Channel*, *supra* note 2, at 348, para. 9 (finding the ultimate parent company, Clear Channel, apparently liable for a single contest rule violation associated with a national contest that ran on six of its radio stations, and upwardly adjusting the proposed forfeiture due to the multiple stations involved) (forfeiture paid).

⁴⁷ See, e.g., *South Central Comm.*, *supra* note 46, at 2860-61, para. 14 (proposing a 100% upward adjustment to the base forfeiture amount for a single contest rule violation based on Licensee's pattern of violative conduct and the wide reach of the violative broadcast across four of its stations, “thus posing harm to a larger audience”); *Clear Channel*, *supra* note 2, at 348, para. 9 (proposing a 550% upward adjustment to the base forfeiture amount for a single contest rule violation based, in part, on the involvement of six of its radio stations).

⁴⁸ See, e.g., *Online Political Files of Entercom License, LLC, Licensee of Various Commercial Radio Stations*, Order and Consent Decree, 35 FCC Rcd 7294, 7300 at paras. 12-13 (MB 2020) (adopting a consent decree in which Entercom admits violating the Commission's online political file rules); *Entercom License, LLC Licensee of Station WNEW(FM), New York, New York*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 2666 (EB 2020) (finding Licensee apparently liable for a \$20,000 forfeiture for station's unauthorized use of the EAS Tone) (forfeiture paid); *CBS Radio Holdings, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10099, 10103, para. 9 (EB 2012) (finding Licensee apparently liable for a \$10,000 forfeiture for violation of the Commission's contest rules) (forfeiture paid); *Entercom Wichita License, LLC Licensee of Station KDGS(FM), Andover, Kansas*, Forfeiture Order, 24 FCC Rcd 1270 (EB 2009) (imposing a \$4,000 forfeiture for violation of the Commission's contest rules); *Entercom Greenville License, LLC, Licensee of Station WYRD(AM) Greenville, SC*, Forfeiture Order, 23 FCC Rcd 11951 (MB-AD 2008) (imposing a \$3,000 forfeiture for violation of the Commission's public file inspection rules). Prior to March 30, 2021, Audacy License, LLC was known as Entercom License, LLC (Entercom). LOI Response, *supra* note 7, at 3 n.12. The Licensee has no post-March 30, 2021 enforcement history, and its pre-March 30, 2021 enforcement history is reflected herein under either its former Entercom name or CBS Radio Holdings, Inc, with which Entercom merged after 2012.

warranting an additional upward adjustment of \$2,000.⁴⁹ Thus, we propose a total upward adjustment of \$10,000 to the base forfeiture amount of \$4,000.

17. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. As previously held: the apparent misconduct was serious, not minor; the Licensee did not disclose the apparent misconduct until after receiving the LOI; and the Licensee has a history of prior violations. Moreover, even assuming, *arguendo*, that the Licensee's misconduct was inadvertent, negligent, or the result of human error, under pertinent Commission precedent, such factors are neither exculpatory nor mitigating, and do not support any downward adjustment.⁵⁰ Similarly, the Licensee's eventual corrective measures after receiving the LOI do not justify a forfeiture reduction.⁵¹

18. In sum, after applying section 503(b)(2)(E) of the Act, section 1.80(b)(11) of the Commission's rules, and the *Forfeiture Policy Statement*, we propose a total forfeiture of \$14,000, for which the Licensee is apparently liable.

IV. CONCLUSION

19. We have determined that the Licensee apparently willfully violated section 73.1216 of the Commission's rules. As a result, the Licensee is apparently liable for a forfeiture of \$14,000.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Audacy License, LLC, Debtor-in-Possession, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for a willful violation of section 73.1216 of the Commission's rules, 47 CFR § 73.1216.

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Audacy License, LLC, Debtor-in-Possession, **SHALL PAY** the full amount of the proposed

⁴⁹ See, e.g., *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665-66, at para. 11 (EB 2020) (upwardly adjusting proposed forfeiture amount based, in part, on a past violation) (forfeiture paid).

⁵⁰ See, e.g., *Unipoint Technologies, Inc. d/b/a Comfi.com d/b/a Masterbell.com d/b/a Pushline.com a/k/a Communications Fidelity*, Forfeiture Order, 29 FCC Rcd 1633, 1640, para. 21 (2014) ("It is immaterial whether [the licensee's] violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight."), *default judgment entered, United States v. Unipoint Technologies, Inc.*, No. 14-12020-LTS, 2016 WL 8902575, at *1-2 (D. Mass. Apr. 27, 2016); *KXOL*, *supra* note 1, at *4, para. 13 ("[E]ven assuming, *arguendo*, that Licensee's misconduct was inadvertent, negligent, or the result of human error, under pertinent Commission precedent, such factors are neither exculpatory nor mitigating, and do not support any downward adjustment."); *Texas Soaring Association, Inc. Midlothian, Texas*, Forfeiture Order, 28 FCC Rcd 10740, 10743-44, para. 7 (EB 2013) ("Even if administrative oversight, inadvertence, or a lack of familiarity with the [Commission's] Rules may have contributed to the violation, they do not ... mitigate liability arising therefrom") (footnotes omitted) (forfeiture paid); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (rejecting argument that the unintentional nature of the violation justifies mitigation of the forfeiture amount), *recons. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015) (forfeiture paid); *América Móvil, S.A.B. de C.V. Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672, 8676, para. 11 (EB 2011) ("While América Móvil claimed that the violation was a result of an inadvertent oversight, it is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.") (forfeiture paid).

⁵¹ See, e.g., *KXOL*, *supra* note 1, at *4, para. 13 ("[Licensee's] eventual corrective measures after receiving the LOI do not justify a forfeiture reduction."); *Saga Communications*, *supra* note 4, at 11937, para. 8 (holding that subsequent remedial steps to avoid recurrence and enhancement of awarded prizes were "neither exculpatory nor mitigating").

forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 24 below.

22. In order for Audacy License, LLC, Debtor-in-Possession, to pay the proposed forfeiture, Audacy License, LLC, Debtor-in-Possession, shall notify Alex Starr, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at Alex.Starr@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Audacy License, LLC, Debtor-in-Possession, shall send electronic notification of payment to Alex Starr, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at Alex.Starr@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁵²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁵³ or printed CORES form⁵⁴ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁵⁵ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number

⁵² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁵³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁵⁴ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁵⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.⁵⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.⁵⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Alex Starr at Alex.Starr@fcc.gov; Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov; and Patrick M. McGrath at Patrick.McGrath@fcc.gov.

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.⁵⁸ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.⁵⁹

⁵⁶ See 47 CFR § 1.1914.

⁵⁷ *Id.* §§ 1.16, 1.80(g)(3).

⁵⁸ 47 U.S.C. § 503(b)(2)(E).

⁵⁹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Laura Berman, Vice President, Audacy, Inc. as Debtor-in-Possession, 2400 Market St. 4th Floor, Philadelphia, PA 19103; and to Suzanne M. Tetreault, Wilkinson Barker Knauer LLP, 1800 M St., NW Suite 800N, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Video Description: Implementation of the Twenty-	)	MB Docket No. 11-43
First Century Communications and Video	)	
Accessibility Act of 2010	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2024

Released: August 8, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a petition filed by Warner Bros. Discovery, Inc. (WBD) on behalf of its wholly owned nonbroadcast programming networks TBS and TNT, for a limited waiver of the Commission’s audio description rules applicable to the top five nonbroadcast networks.¹ Specifically, WBD requests that the Commission grant TBS and TNT, two of the top five nonbroadcast networks, a limited waiver of section 79.3(b)(4) of the Commission’s audio description rules, subject to certain conditions.² Because WBD has made a commitment to provide a substantial amount of audio description on TBS and TNT, as well as on TruTV, that exceeds the current quarterly requirement, and because the unopposed Petition has the support of advocates for blind and visually impaired consumers, we grant the limited waiver for TBS and TNT, subject to the conditions described below.

II. BACKGROUND

2. Audio description makes video programming³ more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”⁴ The Commission’s audio description rules, adopted pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),⁵ require MVPDs that serve 50,000 or more subscribers to provide 87.5 hours of audio description per calendar quarter on channels carrying each of the top five national nonbroadcast networks.⁶ To meet the quarterly requirement, covered entities may count each program they air with

¹ Request of Warner Bros. Discovery, Inc. for Limited Waiver, MB Docket No. 11-43 (filed June 16, 2024) (Petition).

² 47 CFR § 79.3(b)(4).

³ “Video programming” refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media. 47 U.S.C. § 613(h)(2); 47 CFR § 79.3(a)(4).

⁴ 47 CFR § 79.3(a)(3).

⁵ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

⁶ 47 CFR § 79.3(b)(4). The rule requires that 50 hours per calendar quarter be provided in prime time or during children’s programming, while the additional 37.5 hours may be provided at any time between 6 a.m. and 11:59 p.m. local time. *Id.*

audio description no more than twice on a given channel (commonly referred to as the “repeat rule”).⁷

3. The top five national nonbroadcast networks are defined by an average of the national audience share during prime time among nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the audio description rules.⁸ The Media Bureau (Bureau) updates the list of top five national nonbroadcast networks every three years to account for changes in ratings, and the fourth triennial update occurred on July 1, 2024, based on the 2022 to 2023 ratings year.⁹ TBS and TNT are currently two of the top five national nonbroadcast networks subject to the audio description rules.¹⁰

4. The Bureau has previously waived its audio description rules and applied alternative audio description requirements with respect to a top five national nonbroadcast network in certain, limited circumstances. Most recently, in 2021 the Bureau granted TBS a limited waiver of the rules through the end of the triennial period concluding on June 30, 2024 based on the “unique challenge[s]” it faced as a nonbroadcast network airing “substantial repeat, live, or near-live programming.”¹¹ The TBS limited waiver was granted subject to the conditions that the network (1) air at least 1,000 hours of described programming each quarter (and more than 1,400 hours of audio described programming on average per quarter over the entire waiver period) without regard to the number of repeats, and (2) audio describe all newly produced, non-live programming aired between 6:00 a.m. and 11:59 p.m. local time within three business days of its receipt from a production company.¹² Additionally, TBS’s then-owner, WarnerMedia, LLC, agreed to provide audio description for 100 percent of its newly produced, non-live programming on commonly-owned networks, TNT and TruTV, aired between 6:00 a.m. and 11:59 p.m. local time within three business days of receipt.¹³

5. In its Petition, WBD requests a limited waiver of section 79.3 for TBS and TNT from July 1, 2024 to June 30, 2027, which are the dates of the current triennial period.¹⁴ As described more fully below, WBD claims that the repeat rule results in “only a small fraction of the hours of described programming that TBS and TNT can and do provide each calendar quarter” counting towards the audio description requirement, and this “significantly impacts the programming discretion of TBS, TNT, and

⁷ 47 CFR § 79.3(c)(2).

⁸ 47 CFR § 79.3(b)(4). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 at 11854-55, paras. 12-15 (2011) (*2011 Audio Description Order*). “Live or near-live programming” is defined as programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor. 47 CFR § 79.3(a)(7).

⁹ 47 CFR § 79.3(b)(4); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order and Public Notice, MB Docket No. 11-43, DA 24-184, para. 1 (MB 2024) (*2024 Triennial Nonbroadcast Order and Public Notice*).

¹⁰ *See 2024 Triennial Nonbroadcast Order and Public Notice* (granting exemptions to Fox News Channel, ESPN, and MSNBC, on the basis that each provides less than 50 hours per calendar quarter of prime time programming that is not live or near-live, and announcing HGTV, Hallmark, TLC, TNT, and TBS as the top five national nonbroadcast networks subject to the audio description rules as of July 1, 2024).

¹¹ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, MB Docket No. 11-43, 36 FCC Rcd 12646, 12650, para. 9 (MB 2021) (*2021 TBS Order*).

¹² *Id.* at 12649, para. 8.

¹³ *Id.* *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Memorandum Opinion and Order, 34 FCC Rcd 9335, para. 1 (MB 2019) (*USA Network Order*) (granting USA Network a limited waiver subject to the conditions).

¹⁴ Petition at 1.

networks with a similar programming strategy.”¹⁵ In addition, WBD explains that “because TBS and TNT routinely air popular live or near-live programming both inside and outside prime time, these networks have even fewer hours in which to schedule described programming that has not already been counted twice toward meeting the threshold.”¹⁶ As a result, WBD seeks a limited waiver for TBS and TNT, subject to the following conditions. With regard to TBS, WBD proposes that the waiver be conditioned on: “(i) airing at least 1,000 hours of audio-described programming each quarter, and more than 1,400 hours of audio-described programming on average per quarter over the entire waiver period, without regard to the number of repeats; and (ii) describing 100% of newly produced, non-live programming aired between 6:00 a.m. midnight ET within three business days of its receipt from a production company.”¹⁷ WBD additionally proposes that “TruTV would audio describe 100% of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.”¹⁸ With regard to TNT, WBD proposes that the waiver be conditioned on: “(i) airing at least 2,500 hours of audio described programming each year, without regard to the number of repeats; and (ii) audio describing 100% of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days for non-scripted programming.”¹⁹ Unlike for TBS, WBD requests that compliance for TNT would be measured on a calendar year basis rather than a quarter basis, due to the additional flexibility needed for seasonal schedules.²⁰ The waiver would apply to MVPDs carrying TBS and/or TNT programming.²¹

6. On June 21, 2024, the Bureau issued a Public Notice seeking comment on WBD’s Petition.²² No commenter opposes WBD’s request.²³ WBD indicates that it “has discussed this Request with representatives of the American Council for the Blind and National Federation for the Blind and is authorized to state their consent to the grant of this request.”²⁴

7. We evaluate WBD’s waiver request pursuant to the general waiver authority in section 1.3 of the Commission’s rules.²⁵ To waive a requirement for good cause, we must explain (1) why deviating from the general requirement serves the public interest, and (2) the nature of the special

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.*

²¹ *Id.* at 5.

²² *Media Bureau Seeks Comment on TBS and TNT’s Petition for Limited Waiver of Audio Description Requirements*, Public Notice, MB Docket No. 11-43, DA 24-598 (MB 2024).

²³ We note that One Ministries, Inc. (OMI) submitted a comment in response to the Public Notice. However, the comment concerns OMI’s own petitions for reconsideration in unrelated proceedings, and it takes no position on this waiver proceeding. *See* One Ministries, Inc. Comments at 1-2 (June 21, 2024). Therefore, we do not address these comments here.

²⁴ Petition at 1.

²⁵ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

circumstances.²⁶

III. DISCUSSION

8. We find that there is good cause to grant WBD's request for a limited waiver of the audio description rules through the current triennial period beginning on July 1, 2024 and ending on June 30, 2027. This limited waiver applies to every covered MVPD across the country, with respect to the channels on which it carries TBS and TNT.

9. We grant WBD's waiver subject to certain conditions. Specifically, with respect to TBS, the waiver is subject to TBS's commitment to (1) air at least 1,000 hours of audio-described programming each quarter, and more than 1,400 hours of audio-described programming on average per quarter over the entire waiver period, without regard to the number of repeats; and (2) describe 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of its receipt from a production company. Additionally, WBD will provide audio description on TruTV for 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.²⁷ With respect to TNT, the waiver is subject to TNT's commitment to (1) air at least 2,500 hours of audio described programming each year,²⁸ without regard to the number of repeats; and (2) audio describe 100 percent of newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.

10. As we emphasized in the *2021 TBS Order*, we continue to recognize the importance of audio description in making video programming more accessible.²⁹ Still, we acknowledge that compliance with the repeat rule presents unique challenges to TBS and TNT based on their programming models. According to WBD, both TBS and TNT's programming schedules include limited hours of original or once-repeated content that can count toward the quarterly programming requirement for audio description, and an increasing amount of live, near-live, and repeat programming.³⁰ Additionally, these networks "routinely air popular or near-live programming both inside and outside prime time," and therefore have "even fewer hours in which to schedule described programming that has not already been counted twice toward meeting the threshold."³¹ WBD further contends that TNT's programming line-up is "constantly evolving," and that the waiver will allow for flexibility in accommodating these changes.³² We find that WBD has sufficiently detailed the unique challenge that the repeat rule poses for TBS and TNT based on their programming strategies, which include substantial repeat, live, or near-live programming. Therefore, we find that granting WBD limited and conditional relief from the audio description rules serves the public interest by allowing these networks to continue to evolve their programming models while ultimately increasing the amount of audio description available on television.

²⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁷ Although TruTV's prior audio description commitment did not distinguish between scripted and non-scripted programming, WBD notes that it has become "untenable" to meet the three business day requirement for unscripted programming due to the additional "operational challenges" posed by audio describing unscripted programming and the increased volume of such programming. Petition at 12.

²⁸ WBD requests that TNT's waiver be measured on a calendar year basis, rather than a quarterly basis, to allow for flexibility around seasonal schedules. *Id.* at 13.

²⁹ *2021 TBS Order*, 36 FCC Rcd at 12649, para. 9. *See also USA Network Order*, 34 FCC Rcd at 9338, para. 9.

³⁰ Petition at 4, 6, 9.

³¹ *Id.* at 4.

³² *Id.* at 3.

11. WBD's commitment to providing a significant amount of audio described programming is a significant factor in our decision to grant the limited waivers here. In the first quarter of 2024, TBS aired 1,791 hours of audio-described programming, far exceeding the 87.5 hours required by the Commission's rules.³³ Because a large percentage of that programming was repeat programming that aired between three and six times that quarter, however, it could only be counted toward the compliance requirement twice pursuant to the repeat rule.³⁴ Similarly, TNT aired 807 hours of audio described programming with a large percentage of repeats that could not be counted absent a waiver.³⁵

12. WBD's proposed conditions for TBS are comparable to the ones granted in the *2021 TBS Order*.³⁶ We also acknowledge that WBD has committed to providing additional audio described programming on its affiliate network, TruTV.³⁷ Specifically, TruTV will audio describe all newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.³⁸ Regarding TNT, WBD's proposal of 2,500 hours per calendar year of audio described programming without regard to the number of repeats exceeds the minimum hours required by the rules³⁹ and is "tailored to reflect the greater amount of repeat, live, and near-live programming on TNT" as compared to TBS.⁴⁰ As with TruTV, TNT also will audio describe all newly produced, non-live programming aired between 6:00 a.m. and midnight ET within three business days of receipt for scripted programming, and within seven business days of receipt for non-scripted programming.⁴¹

13. Moreover, we take notice of WBD's indication that the American Council for the Blind and the National Federation of the Blind consent to the grant of the waiver.⁴² We find that granting WBD's Petition, with the aforementioned conditions, has the potential to expand accessible content for viewers who are blind or visually impaired.

³³ *Id.* at 9.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Petition at 11-12; *2021 TBS Order*, 36 FCC Rcd at 12649, para. 8.

³⁷ In the *2021 TBS Order*, the Bureau restated Commission guidance that it "will look favorably upon waiver requests demonstrating that (1) all pre-recorded programming between 6 A.M. and midnight in the relevant calendar quarter is being audio described, even if not all of it can be counted toward the rules and (2) the petitioner commits to provide additional hours of video description in calendar quarters other than the one for which it is seeking the waiver, or commits to provide the additional hours of video description in the same calendar quarter but on an affiliated network." *2021 TBS Order*, 36 FCC Rcd at 12648, n.16 (quoting *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 32 FCC Rcd 5962, 5972 (2017)); *id.* at 12649, para. 8.

³⁸ Petition at 12. The *2021 TBS Order* included a commitment to "provide audio description for 100 percent of newly produced, non-live programming on commonly-owned networks, TNT and TruTV, aired between 6:00 a.m. and 11:59 p.m. local time within three business days of receipt." *2021 TBS Order*, 36 FCC Rcd at 12649, para. 8. We are persuaded by the explanation in the Petition that "WBD has found that prior commitment challenging" particularly due to the increase in the amount of unscripted programming and the "increased volume of such programming." Petition at 12.

³⁹ The rules require 87.5 hours of audio described programming per calendar quarter, totaling 350 hours per calendar year. See 47 CFR § 79.3(b)(4). By airing 2,500 hours of audio described programming per calendar year, TNT will greatly exceed the minimum number of hours required by the rules.

⁴⁰ Petition at 12-13.

⁴¹ *Id.* at 13.

⁴² *Id.* at 1.

14. For these reasons, we find good cause to grant WBD a limited waiver of section 79.3(b)(4) of the Commission's audio description rules for MVPDs carrying TBS and TNT for the period beginning on July 1, 2024, and ending on June 30, 2027, subject to the conditions described above.⁴³

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and 1.3, this Memorandum Opinion and Order **IS ADOPTED**.

16. **IT IS FURTHER ORDERED** that the petition for waiver of section 79.3(b)(4) of the Commission's rules, 47 CFR § 79.3(b)(4), filed by Warner Bros. Discovery, Inc. is **GRANTED**, subject to the conditions described herein.

17. 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).

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

⁴³ We note that WBD filed its waiver request only two weeks before the July 1 effective date. In order to allow sufficient comment and processing time, we urge WBD to file future waiver requests in a more timely fashion.



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 24-782
Released: August 9, 2024

**FCC SEEKS COMMENT REGARDING POSSIBLE REVISION OR ELIMINATION OF RULES
ADOPTED IN 2013 UNDER THE REGULATORY FLEXIBILITY ACT,
5 U.S.C. SECTION 610**

CB Docket No. 24-245

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 year 2013 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 on or before the date 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

Sanford S. Williams, Deputy Chief of Staff for Chairwoman Rosenworcel

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. Section 610, for the period beginning January 2013 and ending December 2013. 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 PROCEDURE

Brief Description: Section 1.77 explains that the application procedures set forth in part 1 are general in nature and provides cross-references to detailed application procedures that are applicable to specific services and authorization processes.

Need: This rule is informational and is needed to help the public understand where to find the Commission's detailed application procedures under its various rule parts.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.77	Detailed application procedures; cross references.

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 reporting period, the Commission modified certain reporting requirements applicable to licensees affiliated with a carrier with market power in a cable's World Trade Organization (WTO) Member destination market. In particular, the Commission amended section 1.767(l)(2) to retain the requirement that cable landing licensees that are affiliated with a carrier with market power in a WTO Member destination country report their circuits on those routes.

Need: This change is part of the Commission's efforts to ensure that the Commission's data collections match its data needs, but avoid unnecessary or excessive burdens on telecommunications providers.

Legal Basis: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35-39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96.

Section Number and Title:

1.767 (l)(2)	Cable landing licenses.

SUBPART F—WIRELESS RADIO SERVICES APPLICATIONS AND PROCEEDINGS

Brief Description: Recognizing the need to review its foreign ownership policies and procedures and reduce delay, uncertainty, and expense to facilitate further investment in wireless networks, the Commission adopted rules that modified the policies and procedures that apply to foreign ownership of common carrier radio station licensees – i.e., companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part – pursuant to

sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the “Act”). These new measures also apply to foreign ownership of aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Act.

Need: The Commission adopted these rules to reduce the regulatory costs and burdens imposed on common carrier and aeronautical radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission’s foreign ownership filing requirements and review process; and facilitate investment from new sources of capital at a time of growing need for capital investment in this sector of the Nation’s economy, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, and 310.

Section Number and Title:

1.907 Definitions.

Brief Description: Section 1.913 describes the application procedures that apply to applicants, licenses, and lessees in the wireless radio services.

Need: This rules furthers the Commission’s fundamental statutory responsibility to assign licenses for use of the radio spectrum by describing application requirements and procedures in the wireless radio services.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.913 Application and notification forms; electronic filing.

Brief Description: Recognizing the need to review its foreign ownership policies and procedures and reduce delay, uncertainty, and expense to facilitate further investment in wireless networks, the Commission adopted rules that modified the policies and procedures that apply to foreign ownership of common carrier radio station licensees – i.e., companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part – pursuant to sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the “Act”). These new measures also apply to foreign ownership of aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Act.

Need: The Commission adopted these rules to reduce the regulatory costs and burdens imposed on common carrier and aeronautical radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission’s foreign ownership filing requirements and review process; and facilitate investment from new sources of capital at a time of growing need for capital investment in this sector of the Nation’s economy, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, and 310.

Section Number and Title:

1.990 [added]	Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.
1.991 [added]	Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

1.992 [added]	How to calculate indirect equity and voting interests under section 1.991.
1.993 [added]	Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.
1.994 [added]	Routine terms and conditions.

SUBPART I—PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Brief Description: Section 1.1307 describe the actions that may have a significant impact on the environment and for which environmental assessments must be prepared. Section 1.1310 set for the FCC’s radiofrequency radiation exposure limits.

Need: These rules allow the Commission to meet its requirements under the National Environmental Policy Act of 1969.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.1307	Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.
1.1310	Radiofrequency radiation exposure limits.

SUBPART V—COMMISSION COLLECTION OF ADVANCED TELECOMMUNICATIONS CAPABILITY DATA AND LOCAL EXCHANGE COMPETITION DATA

Brief Description: These rules modify the entities required to submit Form 477 and the submission frequency and stipulate how disclosure of data in Form 477 will be treated.

Need: These rules are needed to reduce reporting burdens and increase the usefulness of data collected through Form 477, which informs the Commission’s efforts to encourage broadband deployment on a reasonable and timely basis to all Americans.

Legal Basis: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35-39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96.

Section Number and Title:

1.7001(a)(2)	Facilities-based providers.
1.7001(b), (c), and (d)	Scope and content of filed reports.

Brief Description: The rule modifications add the collection of broadband deployment data to the Commission’s Form 477 collection. Other modifications streamline and reduce the burdens on providers while making other modest improvements.

Need: Data about broadband and voice deployment and subscription are essential to the Commission’s ability to fulfill its statutory obligations and play a vital public interest role for other state, local, and federal agencies, researchers, and consumers.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

Section Number and Title:

1.7002 Frequency of reports.

SUBPART X—SPECTRUM LEASING

Brief Description: The purpose of this subpart is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements.

Need: These rules serve an ongoing need with respect to defining which services are included in the Commission's spectrum leasing policies, outlined in this section.

Legal Basis: 47 U.S.C. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

Section Number and Title:

1.9005 Included services.

SUBPART BB—DISTURBANCE OF AM BROADCAST STATION ANTENNA PATTERNS

Brief Description: This rule part protects the operations of AM broadcast stations from nearby tower construction that may distort the AM antenna patterns. All parties holding or applying for Commission authorizations that propose to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or propose to install an antenna on an AM tower, are responsible for completing the analysis and notice process described in this subpart, and for taking any measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occur as a result of the tower construction or modification or as a result of the installation of an antenna on an AM tower. (An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, Third Report and Order and Second Order on Reconsideration, FCC 13-115).

Need: These rules establish a single protection scheme for tower construction and modification near AM tower arrays, and provide the option to use a computer modeling methodology that is reflective of current industry practice in lieu of time-consuming direct measurement procedures.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

Section Number and Title:

1.30000 Purpose.
1.30001 Definitions.
1.30002 Tower construction or modification near AM stations.
1.30003 Installations on an AM antenna.
1.30004 Notice of tower construction or modification near AM stations.

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

SUBPART B—ALLOCATION, ASSIGNMENT, AND USE OF RADIO FREQUENCIES

Brief Description: These rules determine when federal stations may be authorized to use frequencies in certain bands.

Need: The rules ensure efficient and effective use of spectrum.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted; Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Section Number and Title:

2.103 Federal use of non-Federal 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.

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 Table of Frequency Allocations.

SUBPART I—MARKETING OF RADIO-FREQUENCY DEVICES

Brief Description: Sections 2.803 and 2.805 specify the how radio frequency devices may be marketed and operated prior to equipment authorization, respectively.

Need: These rules ensure that only radiofrequency devices that have been authorized through the Commission's equipment authorization program are marketed and operated, unless specified exceptions apply. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices that could cause harmful interference to authorized users are not marketed or operated.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.803 Marketing of radio frequency devices prior to equipment authorization.

2.805 Operation of radio frequency devices prior to equipment authorization.

SUBPART J—EQUIPMENT AUTHORIZATION PROCEDURES

Brief Description: Section 2.1033 specifies what information must be included on an application when seeking certification of radiofrequency devices.

Need: These rules ensure that only radiofrequency devices that have been authorized through the Commission's equipment authorization program are marketed and operated, unless specified exceptions apply. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices have proper technical documentation to support authorization of the equipment.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1033(b)(11) Application for certification.

Brief Description: Section 2.1091 specifies which mobile devices must undergo radiofrequency (RF) radiation exposure evaluation.

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:

2.1091 Radiofrequency radiation exposure evaluation: mobile 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.

Need: This rule 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 Import conditions.

PART 4—DISRUPTIONS TO COMMUNICATIONS

Brief Description: These rules require that 911 service providers take reasonable measures to provide reliable 911 service, as evidenced by an annual certification. Providers can comply with this requirement by either implementing certain industry-backed “best practices”, or by implementing alternative measures that are reasonably sufficient to ensure reliable 911 service. 911 service providers certify to 911 circuit auditing, backup power, and network monitoring.

Need: These rules require 911 service providers to certify to best practices related to 911 circuit auditing, backup power, and network monitoring to reduce vulnerabilities in 911 network architecture, maintenance, and operation.

Legal Basis: 47 U.S.C. 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a-1, and 615c.

Section Number and Title:

4.9 Outage reporting requirements – threshold criteria.

PART 5—EXPERIMENTAL RADIO SERVICE

SUBPART A—GENERAL

Brief Description: The rules in this part provide the conditions by which portions of the radio frequency spectrum may be used for the purposes of experimentation, product development, and market trials.

Need: These rules implement the Commission’s statutory requirement to provide for experimental use of radio frequencies.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 336.

Section Number and Title:

5.1	Basis and purpose.
5.3	Scope of service.
5.5	Definition of terms.

SUBPART B—APPLICATIONS AND LICENSES

5.51	Eligibility.
5.53	Station authorization required.
5.54	Types of authorizations available.
5.55	Filing of applications.
5.57	Who may sign applications
5.59	Forms to be used.
5.61	Procedure for obtaining a special temporary authorization.
5.63	Supplemental statements required.
5.64	Special provisions for satellite systems.
5.65	Defective applications.
5.67	Amendment or dismissal of applications.
5.69	License grants that differ from applications.
5.71	License period.
5.73	Experimental report.
5.77	Change in equipment and emission characteristics.
5.79	Transfer and assignment of station authorization for conventional, program, medical testing, Spectrum Horizons, and compliance testing experimental radio licenses.
5.81	Discontinuance of station operation.
5.83	Cancellation provisions.
5.84	Non-interference criterion.
5.85	Frequencies and policy governing frequency assignment.
5.91	Notification to the National Radio Astronomy Observatory.
5.95	Informal objections.

SUBPART C—TECHNICAL STANDARDS AND OPERATING REQUIREMENTS

5.101	Frequency stability.
5.103	Types of emission.
5.105	Authorized bandwidth.
5.107	Transmitter control requirements.

- 5.109 Responsibility for antenna structure painting and lighting.
- 5.110 Power limitations.
- 5.111 Limitations on use.
- 5.115 Station identification.
- 5.121 Station record requirements.
- 5.123 Inspection of stations.
- 5.125 Authorized points of communication.

SUBPART D—BROADCAST EXPERIMENTAL LICENSES

- 5.201 Applicable rules.
- 5.203 Experimental authorizations for licensed broadcast stations.
- 5.205 Licensing requirements, necessary showing.
- 5.207 Supplemental reports with application for renewal of license.
- 5.211 Frequency monitors and measurements.
- 5.213 Time of operation.
- 5.215 Program service and charges.
- 5.217 Rebroadcasts.
- 5.219 Broadcasting emergency information.

SUBPART E—PROGRAM EXPERIMENTAL RADIO LICENSES

- 5.301 Applicable rules.
- 5.302 Eligibility.
- 5.303 Frequencies.
- 5.304 Area of operations.
- 5.305 Program license not permitted.
- 5.307 Responsible party.
- 5.308 Stop buzzer.
- 5.309 Notification requirements.
- 5.311 Additional requirements related to safety of the public.
- 5.313 Innovation zones.

SUBPART F—MEDICAL TESTING EXPERIMENTAL RADIO LICENSES

- 5.401 Applicable rules.
- 5.402 Eligibility and usage.
- 5.403 Frequencies.
- 5.404 Area of operation.
- 5.405 Yearly report.
- 5.406 Responsible party, “stop-buzzer,” and notification requirements, and additional requirements related to safety of the public.
- 5.407 Exemption from station identification requirement.

SUBPART G—COMPLIANCE TESTING EXPERIMENTAL RADIO LICENSES

- 5.501 Applicable rules.
- 5.502 Eligibility.
- 5.503 Scope of testing activities.

- 5.504 Responsible party.
- 5.505 Exemption from station identification requirement.

SUBPART H—PRODUCT DEVELOPMENT AND MARKET TRIALS

- 5.601 Product development trials.
- 5.602 Market trials.

PART 13—COMMERCIAL RADIO OPERATORS

Brief Description: The part 13 rules prescribe the manner and conditions under which commercial radio operators are licensed by the Commission. Section 13.7 sets forth the classifications of operator licenses and endorsements. Section 13.8 describes the authority conveyed by the licenses, certificates, and permits issued under this part. Finally, section 13.9 provides the eligibility requirements and applications for a license or endorsement.

Need: The revised rules provide classification of operator licenses and endorsements (§ 13.7(b)(4)); authority conveyed by licenses, certificates, and permits issued under part 13 (§ 13.8(g)); and eligibility and application for new license or endorsement (§ 13.9(d)(3)). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

- 13.7(b)(4) Classification of operator licenses and endorsements.
- 13.8(g) Authority conveyed.
- 13.9(d)(3) Eligibility and application for new license or endorsement.

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

SUBPART E—INTERNET BROWSERS BUILT INTO TELEPHONES USED WITH PUBLIC MOBILE SERVICES

Brief Description: These rules require that if a manufacturer of a telephone used with public mobile services includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. § 619.

Need: These rules are needed to ensure that blind and low vision consumers can access Internet browsers built into telephones used with public mobile services and the Internet content using such Internet browsers.

Legal Basis: 47 U.S.C. 151,154(i), 154(j), 255, 303, 403, 503, 617, 618, 619.

Section Number and Title:

- 14.60 Applicability.
- 14.61 Obligations with Respect to Internet Browsers Built into Mobile Phones.

PART 15—RADIO FREQUENCY DEVICES

SUBPART A—GENERAL

Brief Description: Section 15.3 contains the definitions of terms associated with radiofrequency devices operating under part 15 rules.

Need: This rule contains the definitions of terms associated with the intentional, unintentional, or incidental radiator equipment that may be operated without an individual license, which ensures devices comport with the FCC’s equipment authorization rules. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices that operate without an individual license and could cause harmful interference to licensed and authorized radiofrequency users are not marketed.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

Section Number and Title:

15.3 Definitions.

Brief Description: Section 15.37 sets dates for when certain devices will no longer receive authorization for use in specific radiofrequency bands and for some devices what rule sections apply following that date.

Need: This rule establishes timelines for when equipment authorization for the use of specified devices in specific spectrum bands will no longer be permitted or after a date when certain devices must be authorized pursuant to another part 15 rule. The rule allows both consumers and equipment manufacturers to understand when devices are no longer eligible to receive authorization.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, and 544A.

Section Number and Title:

15.37 Transition provisions for compliance with this part.

SUBPART C—INTENTIONAL RADIATORS

Brief Description: Section 15.204 requires that an intentional radiator only be operated with the antenna with which it was authorized.

Need: By stipulating that part 15 intentional radiators can only operate with an authorized antenna, this rule allows the Commission to ensure that part 15 intentional radiator devices operate within the required power levels. This allows the Commission to ensure that radiofrequency devices used without an individual license comply with the equipment authorization rules, which in turn ensures that such devices do not cause harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, and 544A.

Section Number and Title:

15.204 External radio frequency power amplifiers and antenna modifications.

Brief Description: Section 15.237 establishes the power and operating requirements for auditory assistance devices operating in the frequency bands 72.0-73.0 MHz, 74.6-74.8 MHz and 75.2-76.0 MHz.

Need: This rule establishes the operating requirements for auditory assistance devices, such as hearing aids, that operate in the spectrum bands 72.0-73.0 MHz, 74.6-74.8 MHz and 75.2-76.0 MHz . Auditory assistance devices are intentional radiators and imposing technical operating requirements ensures they meet the equipment authorization process and be certified for marketing.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.237 Operation in the bands 72.0-73.0 MHz, 74.6-74.8 MHz and 75.2-76.0 MHz.

Brief Description: Section 15.255 establishes the technical parameters for devices operating in the 57-64 GHz band.

Need: This rule sets the operating requirements for intentional radiators in the 57-64 GHz range (subsequently expanded to 71 GHz). Setting power and emission limits for devices operating in this band help to ensure such devices meet the FCC's equipment authorization regime and will not cause harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

15.255 Operation within the band 57-64 GHz.(title has subsequently been changed to
Operation within the band 54-71 GHz.).

SUBCHAPTER B—COMMON CARRIER SERVICES

PART 20—COMMERCIAL 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 20.2 lists other rule parts applicable to commercial mobile radio service providers. Section 20.2(c) adds part 9 of the Commission's rules, which contains 911 and E911 requirements applicable to commercial mobile radio service providers, to the list of the rule parts applicable to commercial mobile radio service providers. Section 20.21 sets forth rules providing for broader availability of signal boosters, while setting technical, operational, and registration requirements for such boosters.

Need: Section 20.2 is needed on an ongoing basis to provide notice to commercial mobile radio service providers of their obligations under applicable 911 and E911 requirements. Section 20.21 is needed on an ongoing basis to continue to provide for the use of signal boosters to enhance wireless coverage for consumers, as well as to ensure that the broad availability of these devices does not adversely affect wireless networks.

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), 615(c), unless otherwise noted.

Section Number and Title:

20.2 Other applicable rule parts.

20.21 Signal boosters.

PART 22—PUBLIC MOBILE SERVICES

SUBPART A—SCOPE AND AUTHORITY

Brief Description: The part 22 rules establish the requirements and conditions under which radio stations may be licensed and used in the Public Mobile Services. Subpart A provides the scope and authority, and section 22.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated for Public Mobile Services.

Need: Section 22.9 was added to the Commission's rules to permit operation of Consumer Signal Boosters under applicable part 22 rules for Public Mobile Services, and it is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.9 Operation of certificated signal boosters.

SUBPART C—OPERATIONAL AND TECHNICAL REQUIREMENTS

Brief Description: Section 22.377 states that transmitters used under this rule part must be certified under the Commission's part 2 equipment authorization rules.

Need: This rule allows the Commission to ensure that radiofrequency devices used in the Public Mobile Services comply with the equipment authorization rules, which in turn ensure that the FCC carries out its responsibilities under the Communications Act and the various treaties and international regulations.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.377 Certification of transmitters.

SUBPART E—PAGING AND RADIOTELEPHONE SERVICE

Brief Description: Section 22.591 lists the channels that are allocated for assignment to fixed transmitters that support other transmitters that provide public mobile service.

Need: This rule furthers the statutory requirement that the Commission assign bands of frequencies to the various classes of stations and provides a channel plan that promotes the effective and efficient use of point-to-point operations in the public mobile paging and radiotelephone stations.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.591 Channels for point-to-point operation.

PART 24—PERSONAL COMMUNICATIONS SERVICES

SUBPART A—GENERAL INFORMATION

Brief Description: The part 24 rules state the conditions under which portions of the radio spectrum are made available and licensed for personal communications services. Subpart A provides general information, and section 24.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated under this part.

Need: Section 24.9 was added to the Commission’s rules to permit operation of Consumer Signal Boosters under applicable part 24 rules for personal communications services, and it is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

Section Number and Title:

24.9	Operation of certificated signal boosters.

PART 25—SATELLITE COMMUNICATIONS

SUBPART C—TECHNICAL STANDARDS

Brief Description: Part 25 contains service and licensing rules for Satellite Communications. Subpart C sets forth technical standards applicable to operations by satellite operators. Section 25.263 provides information sharing requirements for Satellite Digital Audio Radio Authorization (SDARS) terrestrial repeater operators. Section 25.265 requires Mobile Satellite Service licenses operating in the 2000–2020 MHz band to accept interference from lawful operations in the 1995–2000 MHz band (AWS-H Block).

Need: Sections 25.263(b)(3)–(6) were added to the Commission’s rules to incorporate proposed language from AT&T/Sirius XM encouraging the adoption of coordination agreements by Wireless Communications Services (WCS) and SDARS as well as a provision ensuring that WCS and SDARS are able to enter into agreements regarding the logistics of information exchanges. Section 25.265 provides for continued operations of Mobile Satellite Service licenses in the 2000–2020 MHz band and AWS-H Block operations in the 1995–2000 MHz band in the public interest. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

Section Number and Title:

25.263(b)(3)–(6)	Information sharing requirements for SDARS terrestrial repeater operators.
25.265	Acceptance of interference in 2000–2020 MHz.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

SUBPART A—GENERAL INFORMATION

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provision of Miscellaneous Wireless Communications Services (WCS) in twenty-six distinct bands. Subpart A sets forth general information. Sections 27.1(b)(7) and (b)(10) specify that the Part 27 rules apply to Advanced Wireless Services H Block (AWS-H) frequencies in 1915–1920 MHz and 1995–2000 MHz and Advanced Wireless Services 4 (AWS-4) frequencies in 2000–2020 MHz and 2180–2200 MHz. Section 27.2 provides for permissible communications under this part at specified

frequencies. Section 27.5(j) and (k) provide for the licensing of frequencies in the 2000–2020 MHz and 2180–2200 MHz (AWS-4) and 1915–1920 MHz and 1995–2000 (AWS-H) bands, while sections 27.6(i) and (j) provide for the applicable service areas in these bands. Section 27.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated under this part.

Need: Section 27.1(b)(7) and (b)(10) were added to provide for the applicability of Part 27 rules to AWS frequencies. Section 27.2(d) was added to ensure that AWS-4 operators in the 2000–2020 MHz and 2180–2200 MHz do not provide mobile-satellite service under the provisions of this part. Section 27.2(e) was added to ensure only downlink transmissions occur on the 716–722 MHz and 722–728 MHz bands. Sections 27.5(j) and (k) and sections 27.6(i) and (j) were added to provide for licensing of and service in the AWS-4 and AWS-H bands in the public interest. Section 27.9 was added to permit operation of Consumer Signal Boosters under wireless communications services in the applicable bands. These rules all continue to be needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.1(b)(7), (b)(10)	Basis and purpose.
27.2(d), (e)	Permissible communications.
27.5(j), (k)	Frequencies.
27.6	Service areas.
27.6(i), (j)	Service areas.
27.9	Operation of certified signal boosters.

SUBPART B—APPLICATIONS AND LICENSES

Brief Description: These rules state, in part, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the following bands. 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, Advanced Wireless Services H Block (AWS-H) (1915–1920 MHz and 1995–2000 MHz) and Advanced Wireless Services 4 (AWS-4) (2000–2020 MHz and 2180–2200 MHz). The revised rules specify license periods for AWS-H and AWS-4 (sections 27.13(i) and (j)) and construction requirements for AWS-H and AWS-4 (sections 27.14(q) and (r)).

Need: The need for these rules is ongoing to ensure that AWS licenses continue to operate in the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.11	Initial authorization.
27.13	License period.
27.13(i)	License period.
27.13(j)	License period.
27.14	Construction requirements.
27.14 (q)	Construction requirements.
27.14 (r)	Construction requirements.
27.15	Geographic partitioning and spectrum disaggregation.

SUBPART C—TECHNICAL STANDARDS

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations. Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: Section 27.50 is needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.53(h)(2)(iii) and (h)(2)(iv) are needed on an ongoing basis to set forth AWS emission limits for operations in the 1915–1920 MHz and 1995–2000 MHz bands. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate in the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.50	Power limits and duty cycle.
27.50(c)(12), (c)(13)	Power limits and duty cycle.
27.50(d)(7)–(10)	Power limits and duty cycle.
27.53	Emission limits.

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations. Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: Section 27.50 is needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.53(h)(2)(iii) and (h)(2)(iv) are needed on an ongoing basis to set forth AWS emission limits for operations in the 1915–1920 MHz and 1995–2000 MHz bands. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.53(h)(2)(iii), (iv)	Emission limits.

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations. Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: These rules are needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate the public interest.

Section Number and Title:

27.55	Power strength limits.
27.57	International coordination.
27.60	TV/DTV interference protection criteria.
27.64	Protection from interference.
27.65	Acceptance of interference in 2000–2020 MHz.
27.70	Information exchange.

SUBPART E—APPLICATION, LICENSING, AND PROCESSING RULES FOR WCS

Brief Description: Commercial Mobile Radio Service operators are required to submit a description of their proposed facility to a Commission-approved public safety coordinator.

Need: These rules continue to be needed to facilitate communication among licensees and public safety coordinators.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.303	Upper 700 MHz commercial and public safety coordination zone.

SUBPART F—COMPETITIVE BIDDING, PROCEDURES FOR THE 698-806 MHz BAND

Brief Description: These rules describe the conditions under which spectrum is made available and licensed for the provision of wireless communications services in certain bands.

Need: This rule serves an ongoing need to notify the public how the Commission will resolve mutually exclusive bids for these frequencies.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.501 746–758 MHz, 775–788 MHz, and 805–806 MHz bands subject to competitive bidding.

SUBPART K—1915–1920 MHz AND 1995–2000 MHz

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart K contains rules that are applicable to Advanced Wireless Service H Block (AWS-H) stations operating in the 1915–1920 MHz and 1995–2000 MHz frequencies. The Subpart K rules (sections 27.1001, 27.1002, 27.1021, 27.1031, and 27.1041) establish that licenses in these bands will be subject to competitive bidding and define designated entities in the bands for purposes of competitive bidding. In addition, these rules set reimbursement obligations for the new licenses with respect to relocation of incumbent licenses from these bands.

Need: The need for these rules is ongoing to ensure that stations within the Advanced Wireless Service H Block continue to operate in the public interest.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

Section Number and Title:

27.1001	1915–1920 MHz and 1995–2000 MHz bands subject to competitive bidding.
27.1002	Designated entities in the 1915–1920 MHz and 1995–2000 MHz bands.
27.1021	Reimbursement obligation of licensees at 1915–1920 MHz.
27.1031	Reimbursement obligation of licensees at 1995–2000 MHz.
27.1041	Termination of cost-sharing obligations.

SUBPART L—1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz BANDS

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart L contains rules that are applicable to Advanced Wireless Services, including Advanced Wireless Services 4 (AWS-4) stations operating in the 2000–2020/2180–2200 MHz bands. Sections 27.1103 and 27.1104 establish rules applicable to competitive bidding for AWS-4 licenses and define designated entities in the bands for purposes of competitive bidding. Sections 27.1134(e) and 27.1136 require that AWS-4 licensees protect Federal Government Operations and mobile satellite services, respectively.

Need: The need for these rules is ongoing to ensure that AWS-4 stations continue to operate in the public interest.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

Section Number and Title:

27.1103	2000–2020 MHz and 2180–2200 MHz bands subject to competitive bidding.
27.1104	Designated Entities in the 2000–2020 MHz and 2180–2200 MHz bands.
27.1134(e)	Protection of Federal Government Operations.
27.1136	Protection of mobile satellite services in the 2000–2020 MHz and 2180–2200 MHz bands.

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

AND CERTAIN AFFILIATES

Brief Description: These rules modify the entities required to submit Form 477 and the submission frequency and stipulate how disclosure of data in Form 477 will be treated.

Need: These rules are needed to reduce reporting burdens and increase the usefulness of data collected through Form 477, which informs the Commission's efforts to encourage broadband deployment on a reasonable and timely basis to all Americans.

Legal Basis: 47 U.S.C. 35-39, 154, 211, 219, 220; Pub. L. 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted.

Section Number and Title:

43.01(a), (b) Applicability.

Brief Description: Part 43 sets forth reporting requirements for common carriers. During the relevant reporting period, the Commission revised the requirements for providers of international telecommunications to report annual traffic and revenue and circuit information. Among other things, the Commission removed reporting requirements from over a thousand small carriers and greatly simplified the reporting requirements for larger carriers. Additionally, during the same reporting period, the Commission further modernized and streamlined its international telephony rules in an effort to lower costs and increase competition among U.S. carriers by eliminating the International Settlements Policy (ISP) and applying a modified version to Cuba.

Need: In further streamlining and modernizing its reporting requirements, the Commission ensured that it obtains information that is more relevant to the current state of the international telecommunications markets and its data collections match its data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority. With regard to modifying the ISP, the Commission's actions, among other things, enhanced its ability to respond to foreign carriers' anticompetitive behavior in a timely and effective manner and provided U.S. carriers greater flexibility to negotiate lower settlement rates on those routes that are no longer subject to the ISP.

Legal Basis: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C.35-39.

Section Number and Title:

43.62 [added] Reporting requirements for holders of international Section 214 authorizations and providers of international services.

PART 54—UNIVERSAL SERVICE

SUBPART D—UNIVERSAL SERVICE SUPPORT FOR HIGH COST AREAS

Brief Description: Section 54.312(b) prospectively revises rules for the first round of Connect America Fund Phase I incremental funding. Section 54.312(c) implements the second round of Connect America Fund Phase I incremental funding, including acceptance requirements and support amounts. Section 54.313 stipulates reporting requirements for recipients of high cost universal service funding and revises financial reporting obligations for privately held rate-of-return carriers.

Need: These rules are needed for implementation of the second round of Connect America Fund Phase I incremental funding and to increase transparency, monitoring, and oversight over Phase I recipients while reducing reporting burdens for certain carriers.

Legal Basis: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Section Number and Title:

54.312(b), (b)(3)	Incremental Support in 2012.
54.312(c), (c)(4)	Incremental Support in 2013.
54.313(b), (f)(2)	Annual reporting requirements for high-cost recipients.

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 reporting period, the Commission revised the requirements for providers of international telecommunications to report annual traffic and revenue and circuit information. Among other things, the Commission removed reporting requirements from over a thousand small carriers and greatly simplified the reporting requirements for larger carriers. Additionally, during the same reporting period, the Commission further modernized and streamlined its international telephony rules in an effort to lower costs and increase competition among U.S. carriers by eliminating the International Settlements Policy (ISP) and applying a modified version to Cuba.

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. In further streamlining and modernizing its reporting requirements, the Commission ensured that it obtains information that is more relevant to the current state of the international telecommunications markets and its data collections match its data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority. With regard to modifying the ISP, the Commission's actions, among other things, enhanced its ability to respond to foreign carriers' anticompetitive behavior in a timely and effective manner and provided U.S. carriers greater flexibility to negotiate lower settlement rates on those routes that are no longer subject to the ISP.

Legal Basis: 47 U.S.C. 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

Section Number and Title:

63.10 (c)(2) and (4)	Regulatory classification of U.S. international carriers.
63.17 (b) introductory text	Special provisions for U.S. international common carriers.
63.21 (d)	Conditions applicable to all international Section 214 authorizations.
63.22 (e), (f) redesignated as (h); (f), (g), Note 1 and Note 2 [added]	Facilities-based international common carriers.

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 (the Act), as amended. Section 225 of the Act 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. 47 U.S.C. 225(b)(1) (“In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”). Section 225 of the Act defines “TRS” as telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deafblind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio. These 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 2013, § 64.601 rules were amended by revising paragraphs (a)(2) through (29) and by adding paragraphs (a)(30), (a)(31), (a)(32), (a)(33), (a)(34), (a)(35), (a)(36), (a)(37), (a)(38), (a)(39), (a)(40), (a)(41), (a)(42), (a)(43), (a)(44), and (a)(45) to § 64.601 defining terms. Also, in 2013, the Commission amended: § 64.604 to revise paragraphs (b)(2), (b)(4), and (c)(5), by adding paragraphs (c)(12), (c)(13) and (d); amended § 64.605 by revising paragraph (b)(4) [now redesignated as § 9.14(c)(4)]; amended § 64.606 by adding paragraph (a)(4), (g)(3), and (g)(4); and amended § 64.611 by adding paragraphs (a)(3) and (a)(4), by revising paragraph (f), and by adding paragraph (h).

Need: The rules implementing section 225 of the Act 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 of the Act, 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.

Legal Basis: 47 U.S.C. 151-154; 225, 255, 303(r), 616, and 620.

Section Number and Title:

64.601(a)(1)	711.
64.601(a)(2)	ACD platform.
64.601(a)(3)	American Sign Language.
64.601(a)(4)	ANI.
64.601(a)(5)	[Redesignated 64.601(a)(7)] ASCII.
64.601(a)(6)	[Redesignated 64.601(a)(8)] Authorized provider.
64.601(a)(7)	[Redesignated 64.601(a)(9)] Baudot.
64.601(a)(8)	[Redesignated 64.601(a)(10)] Call release.
64.601(a)(9)	[Redesignated 64.601(a)(12)] Common carrier or carrier.
64.601(a)(10)	[Redesignated 64.601(a)(13)] Communications assistant (CA).

64.601(a)(11)	[Redesignated 64.601(a)(14)] Default provider.
64.601(a)(12)	[Redesignated 64.601(a)(15)] Default provider change order.
64.601(a)(13)	[Redesignated 64.601(a)(18)] Hearing carry over (HCO).
64.601(a)(14)	[Redesignated 64.601(a)(21)] Interconnected VoIP service.
64.601(a)(15)	[Redesignated 64.601(a)(22)] Internet-based TRS (iTRS).
64.601(a)(16)	[Redesignated 64.601(a)(23)] Internet Protocol Captioned Telephone Service (IP CTS).
64.601(a)(17)	[Redesignated 64.601(a)(24)] Internet Protocol Relay Service (IP Relay).
64.601(a)(18)	[Redesignated 64.601(a)(25)] IP Relay access technology.
64.601(a)(19)	[Redesignated 64.601(a)(26)] iTRS access technology.
64.601(a)(20)	[Subsequently deleted] Neutral Video Communication Service Platform.
64.601(a)(21)	[Redesignated 64.601(a)(27)] New default provider.
64.601(a)(22)	[Redesignated 64.601(a)(28)] Non-English language relay service.
64.601(a)(23)	[Redesignated 64.601(a)(28)] Non-interconnected VoIP service.
64.601(a)(24)	[Redesignated 64.601(a)(30)] Numbering partner.
64.601(a)(25)	[Redesignated 64.601(a)(31)] Original default provider.
64.601(a)(26)	[Redesignated 64.601(a)(36)] Qualified interpreter.
64.601(a)(27)	[Redesignated 64.601(a)(38)] Registered Internet-based TRS user.
64.601(a)(28)	[Redesignated 64.601(a)(39)] Registered Location.
64.601(a)(29)	[Redesignated 64.601(a)(40)] Sign language.
64.601(a)(30)	[Redesignated 64.601(a)(41)] Speech-to-speech relay service (STS).
64.601(a)(31)	[Redesignated 64.601(a)(42)] Speed dialing.
64.601(a)(32)	[Redesignated 64.601(a)(43)] Telecommunications relay services (TRS).
64.601(a)(33)	[Redesignated 64.601(a)(44)] Text telephone (TTY).
64.601(a)(34)	[Redesignated 64.601(a)(45)] Three-way calling feature.
64.601(a)(35)	[Redesignated 64.601(a)(46)] TRS Numbering Administrator.
64.601(a)(36)	[Redesignated 64.601(a)(47)] TRS Numbering Directory.
64.601(a)(37)	[Redesignated 64.601(a)(48)] TRS User Registration Database.
64.601(a)(38)	[Redesignated 64.601(a)(49)] Unauthorized provider.
64.601(a)(39)	[Redesignated 64.601(a)(50)] Unauthorized change.
64.601(a)(40)	[Redesignated 64.601(a)(51)] Video Relay Service (VRS).
64.601(a)(41)	[Redesignated 64.601(a)(53)] Visual privacy screen.
64.601(a)(42)	[Redesignated 64.601(a)(54)] Voice carry over (VCO).
64.601(a)(43)	[Redesignated 64.601(a)(55)] VRS access technology.
64.601(a)(44)	[Redesignated 64.601(a)(56)] VRS access technology reference platform.
64.601(a)(45)	[Subsequently deleted] VRS CA service provider.
64.604(b)(2)	Speed of answer.
64.604(b)(4)	TRS facilities.
64.604(c)(5)	Jurisdictional separation of costs.
64.604(c)(12)	Discrimination and preferences.
64.604(c)(13)	Unauthorized and unnecessary use of VRS or IP CTS.
64.604(d)	Other standards.
64.605(b)(4)(ii)	[Redesignated 47 CFR 9.14(c)(4)(ii)] Emergency Calling Requirements.
64.606(a)(4)	[Subsequently deleted] RE: Neutral Video Communications Service Platform.
64.606(g)(3)	VRS provider compliance plan.
64.606(g)(4)	VRS provider compliance plan corrections.
64.611(a)(3)	Certification of eligibility of VRS users.
64.611(a)(4)	TRS User Registration Database information.
64.611(f)	iTRS access technology.
64.611(h)	[Subsequently deleted] Use of Neutral Video Communication Service Platform.
64.615	TRS User Registration Database and administrator.

64.617	[Subsequently deleted] Neutral Video Communication Service Platform.
64.619	VRS Access Technology Reference Platform and administrator.
64.621	Interoperability and portability.
64.623	Administrator requirements.
64.630	Applicability of change of default TRS provider rules.
64.631	Verification of orders for change of default TRS providers.
64.632	Letter of authorization form and content.
64.633	Procedures for resolution of unauthorized changes in default provider.
64.634	Procedures where the Fund has not yet reimbursed the provider.
64.635	Procedures where the Fund has already reimbursed the provider.
64.636	Prohibition of default provider freezes.

SUBPART V—RURAL CALL COMPLETION

Brief Description: These rules establish a framework to address the completion of long-distance telephone calls to rural areas for certain providers of long-distance voice service. The rules also prohibit false ring signaling for long-distance voice service providers.

Need: These rules are needed to help eliminate the problem of non-completion of calls to rural areas.

Legal Basis: 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403.

Section Number and Title:

64.2101	Definitions.

SUBPART W—RING SIGNALING INTEGRITY

64.2201	Ringling Indication Requirements.

SUBPART EE—TRS CUSTOMER PROPRIETARY NETWORK INFORMATION

Brief Description: These rules implement customer proprietary network information (CPNI) protections for users of telecommunications relay services (TRS) and point-to-point video service pursuant to sections 4, 222, and 225 of the Act, as amended. The rules dictate the conditions under which a TRS provider may use, disclose, or permit access to CPNI, how TRS providers may seek approval for use of CPNI, notices that TRS providers must provide regarding use or disclosure of CPNI, the safeguards for the use and disclosure of CPNI that TRS providers must implement, and the procedures TRS providers must follow in the event of a breach of CPNI security.

Need: These rules are necessary to allow appropriate use and disclosure of CPNI by TRS providers, to inform TRS users of how their CPNI can be used and disclosed, and to protect against unnecessary and unlawful use and disclosure of TRS users' CPNI.

Legal Basis: 47 U.S.C. 154, 222, 225.

Section Number and Title:

64.5101	Basis and purpose.
64.5103	Definitions.
64.5105	Use of customer proprietary network information without customer approval.
64.5107	Approval required for use of customer proprietary network information.

64.5108	Notice required for use of customer proprietary network information.
64.5109	Safeguards required for use of customer proprietary network information.
64.5110	Safeguards on the disclosure of customer proprietary network information.
64.5111	Notification of customer proprietary network information security breaches.

SUBPART FF—INMATE CALLING SERVICES

Brief Description: These rules reduce the rates for interstate inmate calling services by requiring providers to charge cost-based rates. The rules establish interim rate caps for debit and prepaid calling. The rules also prohibit billing-related call blocking unless the provider has an alternative means to pay for a call and special charges for technologies used to access telephone relay service. They also require inmate calling service providers to submit an annual report to the Commission.

Need: These rules are needed to establish just, reasonable, and fair rates for interstate inmate calling services.

Legal Basis: 47 U.S.C. 151, 154(i)-(j), 201, 225, 276, and 303(r).

Section Number and Title:

64.6000	Definitions.
64.6030	Inmate Calling Services Interim Rate Cap.
64.6050	Billing-Related Call Blocking.
64.6060	Annual Reporting and Certification Requirement.

PART 73—RADIO BROADCAST SERVICES

SUBPART A—AM BROADCAST STATIONS

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13-115).

Need: This rule is necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.45(c) intro.	AM antenna systems.

SUBPART B—FM BROADCAST STATIONS

73.316(e)	FM antenna systems.

SUBPART E—TELEVISION BROADCAST STATIONS

73.685(h) Transmitter location antenna system.

SUBPART G—LOW POWER FM BROADCAST STATION (LPFM)

Brief Description: These rules implement the provisions of the Local Community Radio Act of 2010. They also propose changes to rules intended to promote the low power FM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Report and Order, FCC 12-144).

Need: These rules are necessary to implement the provisions of the Local Community Radio Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.807	Minimum distance separation between stations.
73.809(a) intro.	Interference protection to full service FM stations.
73.810	Third Adjacent channel interference.
73.811	LPFM power and antenna height requirements.
73.825	Protection to reception of TV channel 6.
73.827	Interference to the input signals of FM translator or FM booster stations.

Brief Description: This rule helps protect the input signals of FM translator and FM booster stations from interference by low power FM stations. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Order on Reconsideration, FCC 13-134).

Need: This rule is necessary to prevent interference from low power FM stations and protect the signals of FM translator and booster stations.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.827(a) intro., (a)(1) and (b)	Interference to the input signals of FM translator or FM booster stations.

Brief Description: These rules implement the provisions of the Local Community Radio Act of 2010. They also propose changes to rules intended to promote the low power FM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Report and Order, FCC 12-144).

Need: These rules are necessary to implement the provisions of the Local Community Radio Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.850(c)	Operating schedule.

73.853(a)(3), (b)(4), and (c)	Licensing requirements and service.
73.855	Ownership limits.
73.860	Cross-ownership limits.
73.870(a) intro.	Processing of LPFM broadcast station applications.
73.871(c)(5), (6), and (7)	Amendment of LPFM broadcast station applications.
73.872 (b), (c)(4), (d), and (e)	Selection procedure for mutually exclusive LPFM applications.
73.873	LPFM license period.

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13-115).

Need: This rule is necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.875(c) intro. Modification of transmission systems.

SUBPART H—RULES APPLICABLE TO ALL BROADCAST STATIONS

Brief Description: These rules help establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13-115).

Need: These rules are necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.1675(c)(1) Auxiliary antennas.
73.1690(c) intro Modification of transmission systems.

SUBPART J—CLASS A TELEVISION BROADCAST STATIONS

73.6025(c) Antenna system and station location.

SUBCHAPTER C—BROADCAST RADIO SERVICES

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

SUBPART—GENERAL; RULES APPLICABLE TO ALL SERVICES IN PART 74

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13-15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.1 Scope.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13-15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.5 intro. Cross reference to rules in other parts.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13-15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.15 Station license period.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006*

Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET), Report and Order, FCC 13-15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission’s streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.16	Temporary extension of station licenses.
74.28	Additional orders.

SUBPART G—LOW POWER TV AND TRANSLATOR STATIONS

Brief Description: Revises rule to cross reference revised experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission’s Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET), Report and Order, FCC 13-15).*

Need: This rule is necessary to cross reference rules applicable to the service covered by this subpart and implement the Commission’s streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.780	Broadcast regulations applicable to translators and low power stations.

SUBPART L—FM BROADCAST TRANSLATOR STATIONS AND FM BROADCAST BOOSTER STATIONS

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13-115).

Need: This rule is necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.1237(e)	Antenna location.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

SUBPART K—TECHNICAL STANDARDS

Brief Description: This rule addresses cable operators ability to encrypt the basic service tier in all-digital systems, provided that those cable operators undertake certain consumer protection measures for a limited period of time in order to minimize any potential subscriber disruption. (*Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, FCC 12-126).

Need: This rule is necessary to protect consumers if a cable operator encrypts the basic service tier.

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:

76.630(a) Compatibility with consumer electronics equipment.

SUBPART O—COMPETITIVE ACCESS TO CABLE PROGRAMMING

Brief Description: These rules establish policies and procedures for addressing exclusive contracts involving satellite-delivered, cable-affiliated programming on a case-by-case basis. (*Revision of the Commission's Program Access Rules*, Report and Order, FCC 12-123).

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:

76.1002(c)(3)(i), (ii) intro., (4) intro., and (5) intro.	Specific unfair practices prohibited.
76.1003(e)(1), (j), and (m)	Program access proceedings.
76.1004(b)	Applicability of program access rules to common carriers and affiliates.

SUBPART S—OPEN VIDEO SYSTEMS

76.1507(a)(3) and (b) Competitive access to satellite cable programming.

PART 79 ACCESSIBILITY OF VIDEO PROGRAMMING

SUBPART A—VIDEO PROGRAMMING OWNERS, PROVIDERS, AND DISTRIBUTORS

Brief Description: This rule implements the *Twenty-First Century Communications and Video Accessibility Act of 2010* by requiring video programming distributors and video programming providers (including program owners) to make televised emergency information accessible to individuals who are blind and visually impaired. (*Accessible Emergency Information, Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-45).

Need: This rule is necessary to ensure access to emergency information for individuals who are blind and visually impaired in furtherance of 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:

79.2(b) and (c) Accessibility of programming providing emergency information.

SUBPART B—APPARATUS

Brief Description: These rules implements the *Twenty-First Century Communications and Video Accessibility Act of 2010* by requiring the manufacturers of devices that display video programming to ensure that certain apparatus are able to make available audio description and accessible emergency information provided via the secondary audio stream. (*Accessible Emergency Information, Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 13-45).

Need: These rules are necessary to ensure access to audio description and emergency information for individuals who are blind and visually impaired in furtherance of 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:

79.105(a),(b), and (c) Audio description and emergency information accessibility requirements for all apparatus.
79.106 Audio description and emergency information accessibility requirements for recording devices.

Brief Description: These rules modify and clarify prior Commission decisions regarding apparatus used by consumers to view video programming. (*Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration, FCC 13-84).

Need: This rule is necessary to ensure access to video programming for those that are deaf or hard of hearing in furtherance of 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:

79.101(a)(2) note Closed caption decoder requirements for analog television receivers.
79.102(a)(3) note Closed caption decoder requirements for digital television receivers and converter boxes.
79.103(a) note Closed caption decoder requirements for apparatus.
79.104 (a) note Closed caption decoder requirements for recording devices.

PART 80—STATIONS IN THE MARITIME SERVICE

SUBPART D—OPERATOR REQUIREMENTS

Brief Description: The part 80 rules state the conditions under which radios may be licensed and used in the maritime services, but these rules do not govern radio stations operated by agencies of the U.S.

Government. Subpart D sets forth operator requirements, and section 80.151 provides for classification of operator licenses and endorsements.

Need: Section 80.151(b)(12) was added to include T. Radiotelegraph Operator Licenses as a type of license issued by the Commission and is needed on an ongoing basis to ensure this type of license is available to licensees.

Legal Basis: 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.151(b)(12) Classification of operator licenses and endorsements.

SUBPART H—FREQUENCIES

Brief Description: Section 80.377 lists the frequencies designated for ship earth stations.

Need: By setting forth frequencies that are available for ship earth stations, the Commission furthers the statutory requirement to assign bands of frequencies to the various classes of stations.

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:

80.377 Frequencies for ship earth stations.

PART 87—AVIATION SERVICES

SUBPART B—APPLICATIONS AND LICENSES

Brief Description: Section 87.27 states that licenses in the aviation services will normally issued for a ten-year term.

Need: This rule implements, for this rule part, the statutory requirement that licenses for the use of channels be issued for limited periods of time.

Legal Basis: 47 U.S.C. 154, 303 and 307(e).

Section Number and Title:

87.27 License term.

SUBPART C—OPERATING REQUIREMENTS AND PROCEDURES

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart C sets forth operating requirements and procedures, and section 87.87 provides classification of operator licenses and endorsements.

Need: Section 87.87(b)(4) added T. Radiotelegraph Operator Licenses as a type of license issued by the Commission under this part and is needed on an ongoing basis to ensure this type of license is available to licensees.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.87(b)(4) Classification of operator licenses and endorsements.

SUBPART I—AERONAUTICAL ENROUTE STATIONS, AERONAUTICAL FIXED STATIONS, AND AIRCRAFT DATA LINK LAND TEST STATIONS

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart I oversees aeronautical enroute stations, aeronautical fixed stations, and aircraft data link land test stations. Sections 87.285 and 87.287 focus on aircraft data link land test stations, and these sections govern the scope of service and frequencies assignable, respectively.

Need: Sections 87.285 and 87.287 are both needed on an ongoing basis to provide for the operation of aircraft data link land test stations in the public interest. Section 87.285 sets forth the scope of services, while section 87.287 indicates the assignable frequencies to aircraft data link land test stations.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.285 Scope of service.
87.287 Frequencies.

SUBPART L—AERONAUTICAL UTILITY MOBILE STATIONS

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart L sets forth rules for aeronautical utility mobile stations, and section 87.349 provides for assignable frequencies under these rules.

Need: Section 87.349(f) was added to section 87.349 for assignment of the 1090 MHz frequency for use by aeronautical utility mobile stations for ground vehicle identification and collision avoidance after coordination with the FAA and provides for five specific conditions, and this rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.349 Frequencies.

SUBPART Q—STATIONS IN THE RADIODETERMINATION SERVICE

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart Q provides rules for stations in the radiodetermination service. Section 87.475 sets forth assignable frequencies under this part while section 87.483 describes and governs audio visual warning systems.

Need: Sections 87.475(b)(10)–(14) were added to provide additional frequencies for radionavigation land stations while section 87.483 was added to explain and govern audio visual warning systems, and both rules are needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.475	Frequencies.
87.483	Audio visual warning systems.

PART 90 — PRIVATE LAND MOBILE RADIO SERVICES

SUBPART A – GENERAL INFORMATION

Brief Description: These rules address permissible content under the Travelers’ Information Stations (TIS) rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. The rules also define and authorize TIS, to allow the use of all Part 90 facilities, including TIS, for the transmission of “any communications related directly to the imminent safety-of-life or property,” and for emergency communications “during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster.

Need: These rules are necessary to promote an efficient and effective TIS system in order to ensure travelers have access to emergency information relevant to their journey.

Legal Basis: 47 U.S.C. 54(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.7	Definitions

SUBPART F—RADIOLOCATION SERVICE

Brief Description: The part 90 rules govern private land mobile radio services. Subpart F sets forth rules for radiolocation services. Section 90.103 provides for eligibility requirements and assignable frequencies for radiolocation services under this part.

Need: The revised text of section 90.103(c)(30) explains that this frequency band is shared with and is on a secondary basis to the Government Radiolocation Service, the Fixed Satellite Service in part 25, and the Citizens Broadband Radio Service in part 96 and that no new licenses for Non-Federal Radiolocation Services in this band will be issued after July 23, 2015. This rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.103	Radiolocation service.

SUBPART H—POLICIES GOVERNING THE ASSIGNMENT OF FREQUENCIES

Brief Description: These rules provide detailed information concerning 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: The rules discuss the conditions and limitations by which authorized stations may share their station.

Legal Basis 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.179	Shared use of radio stations

SUBPART I—GENERAL TECHNICAL STANDARDS

Brief Description: The part 90 rules govern private land mobile radio services. Subpart I sets forth general technical standards. Section 90.203 describes the certification required for transmitters.

Need: Section 90.203(p) is needed on an ongoing basis to provide for the certification requirements for signal boosters. 90.205 is needed on an ongoing basis for efficient and effective operations without interference.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.203	Certification required.
90.205	Power and antenna height limits

SUBPART J—NON-VOICE AND OTHER SPECIALIZED OPERATIONS

Brief Description: These rules address permissible content under the Travelers’ Information Stations (TIS) rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. The rules also define and authorize TIS, to allow the use of all Part 90 facilities, including TIS, for the transmission of “any communications related directly to the imminent safety-of-life or property,” and for emergency communications “during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster.

Need: These rules are necessary to promote an efficient and effective TIS system in order to ensure travelers have access to emergency information relevant to their journey.

Legal Basis: 47 U.S.C. 4(i), 11, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.242	Travelers’ information stations.

Brief Description: Section 90.250 describes how meteor burst communications may be authorized for the use of private radio stations.

Need: This rule furthers the Commission’s interests in promoting the use of the radio spectrum by setting forth the frequency bands, technical requirements, and geographic use area for this particular type of radio communication.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.250 Meteor burst communications.

SUBPART N—OPERATING REQUIREMENTS

Brief Description: The part 90 rules govern private land mobile radio services. Subpart N sets forth operating requirements. Section 90.425 requires stations licensed under this part to transmit identification in accordance with the listed procedures.

Need: Section 90.425(f) was added to provide special provisions for stations licensed under this part that are not classified as commercial mobile radio service providers under part 20 of this chapter, and the rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.425 Station identification.

SUBPART R—REGULATIONS GOVERNING THE LICENSING AND USE OF FREQUENCIES IN THE 763-775 AND 793-805 MHz BANDS

Brief Description: These rules primarily address technical issues associated with the 758-769/788-799 MHz band, which is licensed to the First Responder Network Authority (FirstNet) on a nationwide basis.

Need: To set forth the regulations governing the licensing and operations of all systems operating in the 758–775 MHz and 788–805 MHz frequency bands, including eligibility, operational, planning and licensing requirements and technical standards for stations licensed in these bands.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.523	Eligibility.
90.533	Transmitting sites near the U.S./Canada or U.S./Mexico border.
90.542	Broadband transmitting power limits.
90.543	Emission limitations.
90.549	Transmitter certification.
90.555	Information exchange.

PART 101—FIXED MICROWAVE SERVICES

SUBPART C—TECHNICAL STANDARDS

Brief Description: Section 101.129 describes what a radio station applicant must determine with respect to technical considerations applicable to transmitter locations prior to filing its license application.

Need: This rule furthers the Commission’s interest in managing the use of the radiofrequency spectrum as well as its statutory requirement to determine the location of individual stations.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

101.129 Transmitter location.

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

In the Matter of	)	
	)	
Applications of Liberty Latin America Ltd. and	)	GN Docket No. 24-55
DISH Network Corporation	)	
	)	
For Consent To Assignment of Spectrum Licenses,	)	
Assets, and Customers of DISH Network	)	
Corporation to Liberty Latin America Ltd. in	)	
Puerto Rico and the U.S. Virgin Islands	)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: August 8, 2024

Released: August 9, 2024

By the Chiefs, Office of International Affairs and Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider the applications¹ of Liberty Latin America Ltd. (Liberty Latin America) and DISH Network Corporation

¹ The Applicants filed the spectrum license assignment applications on December 4, 2023. *See* Applications of Liberty Latin America and DISH Network Corporation for Assignment Authorization, ULS File No. 0010802260 (continued....)

(DISH) (collectively, and with their subsidiaries, the Applicants) pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act), and sections 1.948 and 63.24 of the Commission's rules² for consent to the assignment of spectrum licenses and customers held by DISH subsidiaries to Liberty Mobile Puerto Rico Inc. (LMPR) and Liberty Mobile USVI Inc. (LMUSVI) in Puerto Rico and the U.S. Virgin Islands (USVI) (LMPR and LMUSVI, collectively, Liberty). Liberty Latin America has also filed a petition for a declaratory ruling (Petition)³ to permit foreign ownership above the 25% benchmarks contained in section 310(b)(4) of the Act and section 1.5001(a)(1) of the Commission's rules.⁴

2. After carefully evaluating the potential competitive effects of the proposed assignments, we find that the likelihood of competitive harm is low. As discussed below, we find that the transaction will not lead to an undue increase in the market share of Liberty, nor do we find that the increase in Liberty's spectrum holdings, though above the spectrum screen trigger, is a reason for denying the applications in this case. As we have stated previously, the Commission's spectrum screen is not a hard cap on a company's holdings, but rather a trigger for further competitive analysis regarding the impact of a proposed transaction on the market for wireless services, and here we find no cause for concern. We further find some public interest benefits are likely to be realized as a result of the transaction, such as enhanced competition in Puerto Rico and the USVI by providing Liberty with the additional spectrum resources necessary to increase network capacity, improve service quality, and compete more effectively. For these reasons, we find that the public interest will be served by granting the applications.

3. We also find that the public interest would not be served by prohibiting foreign ownership of Liberty Mobile Inc. (Liberty Mobile), the controlling U.S. parent of LMPR and LMUSVI, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Petition. As discussed below, grant of the applications and Petition are conditioned on Liberty Latin America's continued compliance with its July 1, 2020 Letter of Agreement with the Department of Justice and the Department of Defense (2020 LOA).⁵

II. BACKGROUND

A. Description of the Applicants

4. Liberty Latin America is a registered company in Bermuda that includes several subsidiaries.⁶ Liberty Latin America provides fixed, mobile, and subsea telecommunications services in

(Continued from previous page) —————
(lead application). The initial application included a Public Interest Statement, declarations, and exhibits. On January 5, 2024, the Applicants filed a Spectrum Aggregation Chart. On January 26, 2024, the Applicants submitted an updated Public Interest Statement, declarations, and exhibits. On February 5, 2024, the Applicants filed a revised Public Interest Statement. *See* Amended Application and Proposed Assignment of DISH Wireless Spectrum Licenses in Puerto Rico and U.S. Virgin Islands to Liberty Mobile Puerto Rico Inc. and Liberty Mobile USVI Inc. (filed Feb. 5, 2024) (Revised Public Interest Statement). ICFS File Nos. ITC-ASG-20231208-00148 (filed Dec. 8, 2023); ITC-ASG-20240214-00033 (filed Feb. 14, 2024).

² 47 CFR §§ 1.948, 63.24.

³ Petition for Declaratory Ruling, File No. ISP-PDR-20240125-00001 (filed Jan. 25, 2024) (Petition).

⁴ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1).

⁵ Letter of Agreement from John Winter, Senior Vice President, Chief Legal Officer & Secretary, Liberty Latin America Ltd., to Assistant Attorney General for National Security, Department of Justice, and Deputy Chief Information Officer for Cybersecurity, Department of Defense, dated July 1, 2020. A copy of the LOA is publicly available and may be viewed on the FCC website through ICFS by searching for ISP-PDR-20240125-00001 and accessing "Other filings related to this application" from the Document Viewing area.

⁶ Liberty Latin America SEC Form 10-Q (filed May 7, 2024), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001712184/59388360-0df7-4971-a70a-4fe05cd6de5c.pdf>; Public Interest Declaration of Jeffrey A. Eisenach, Ph.D. and Robert Kulick, Ph.D. on behalf of Liberty Latin America at para. 11 (Declaration of Eisenach and Kulick).

Puerto Rico and in the USVI, as well as Panama, Costa Rica, the Caribbean, and other parts of Latin America.⁷ LMPR and LMUSVI are wholly-owned subsidiaries of Liberty Mobile, which in turn is a wholly-owned subsidiary of Liberty Latin America.⁸ LMPR and LMUSVI provide wireless services to customers in Puerto Rico and the USVI (LMPR and LMUSVI, collectively, Liberty).⁹

5. DISH Wireless Puerto Rico L.L.C. is a limited liability company organized under the laws of Puerto Rico whose parent company, DISH, is a corporation organized under the laws of Nevada.¹⁰ DISH offers prepaid and postpaid retail wireless services to subscribers under its Boost Mobile, Boost Infinite, and Gen Mobile brands.¹¹

B. Description of the Transaction

6. On November 5, 2023, Liberty Mobile and DISH entered into a license purchase agreement pursuant to which Liberty Mobile would purchase spectrum held by DISH subsidiaries in the following bands: 600 MHz, Lower 700 MHz, Advanced Wireless Services (AWS-3, AWS-4, AWS H Block), Citizens Broadband Radio Service (CBRS), and millimeter wave (mmW) upper microwave flexible use licenses in the 37 and 47 GHz bands in Puerto Rico and the USVI.¹² In addition, Liberty and DISH subsidiaries entered into an asset purchase agreement pursuant to which Liberty would purchase approximately 120,000 subscribers from DISH's Boost Mobile (Boost) and Gen Mobile (Gen Mo) in Puerto Rico and the USVI.¹³

7. The Applicants assert that the proposed assignments will result in significant public interest benefits for consumers in Puerto Rico and the USVI particularly by increasing the capacity and throughput speeds of Liberty's wireless network.¹⁴ The Applicants further argue that there will be no loss of actual or potential competition in Puerto Rico or the USVI as a result of the assignments.¹⁵ The Applicants have indicated that the transition of Boost and Gen Mo customers will be a seamless transition of subscribers from DISH to Liberty's network.¹⁶

C. Transaction Review Process

8. On December 4, 2023, Liberty Latin America and DISH filed applications seeking consent to assign spectrum licenses in the aforementioned bands that were held by DISH subsidiaries to

⁷ Revised Public Interest Statement at 4.

⁸ Revised Public Interest Statement at 1, 4-5.

⁹ Revised Public Interest Statement at 1, 4-5.

¹⁰ Revised Public Interest Statement at 3.

¹¹ Revised Public Interest Statement at 3; Declaration of Eisenach and Kulick at para 7. On December 31, 2023, EchoStar Corp, a holding company organized under the laws of the State of Nevada, acquired DISH, with DISH Network becoming a wholly owned subsidiary of EchoStar. See EchoStar 2023 Annual Report at 1 (filed Mar. 20, 2024), https://www.sec.gov/Archives/edgar/data/1415404/000110465924036719/tm248520d2_ars.pdf (EchoStar 2023 Annual Report).

¹² Revised Public Interest Statement at 2; *id.* at Exh. A.

¹³ The Applicants state that the assignments of customers in Puerto Rico and the USVI are from DISH Wireless L.L.C. and DISH Wireless Puerto Rico L.L.C. (DISH Wireless PR) to LMPR and LMUSVI and include certain customer contracts and related subscriber assets. Revised Public Interest Statement at 2. ICFS File Nos. ITC-ASG-20231208-00148; ITC-ASG-20240214-00033.

¹⁴ Revised Public Interest Statement at 1-2, 14-27; Letter from Jeff Blum, Executive Vice President, EchoStar, and Thomas F. Bardo and Robert L. Hoegle, Counsel for LLA, LMPR and LMUSVI, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 24-55 (filed July 17, 2024) (*EchoStar/Liberty Latin America Ex Parte*).

¹⁵ Revised Public Interest Statement at 1, 20-26.

¹⁶ Revised Public Interest Statement at 27-28.

Liberty in Puerto Rico and the USVI and seeking approval to assign the Boost and Gen Mo subscribers from DISH to Liberty Latin America in Puerto Rico and the USVI pursuant to the proposed transaction. Subsequently, the Applicants filed amended applications for the spectrum assignment on December 5, 2023, January 5, 2024, January 26, 2024, and February 6, 2024.¹⁷ The Applicants filed section 214 applications for the assignment of DISH's international customers in Puerto Rico and the U.S. Virgin Islands to LMPR and LMUSVI on December 8, 2023 and February 14, 2024, respectively.¹⁸ On January 25, 2024, the Applicants filed a petition for declaratory ruling to permit foreign ownership above the 25% benchmarks in section 310(b)(4) of the Act and section 1.5001(a)(1) of the Commission's rules.¹⁹ On February 23, 2024, the Commission released a public notice announcing acceptance of the applications for filing and establishing a pleading cycle, with petitions to deny due March 11, 2024, oppositions due March 21, 2024, and replies due March 26, 2024.²⁰ No comments or petitions were filed in the instant transaction.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

9. Pursuant to sections 214(a) and 310(d) of the Act, we must determine whether granting the applications for the assignment of assets, customers, and licenses will serve the public interest, convenience, and necessity.²¹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the

¹⁷ See ULS File No. 0010802260. The Applicants filed a long-term spectrum manager lease on May 24, 2024. See ULS File No. 0011091068. The long-term spectrum manager lease is for certain AWS-3 and AWS-4 spectrum held by DISH subsidiaries, DBSD Corporation (DBSD), Gamma Acquisition L.L.C (Gamma), and Northstar Wireless, L.L.C. (Northstar) for use by Liberty Latin America subsidiaries LMPR and LMUSVI covering the markets of Puerto Rico and the USVI until June 14, 2025. DISH subsidiaries DBSD and Gamma previously entered into a short-term de facto transfer lease agreement, dated September 28, 2021, with Liberty Latin America subsidiaries, LMPR and LMUSVI. Under the short-term lease agreement, Liberty Latin America subsidiaries, LMPR and LMUSVI, provided 5G mobile wireless services to customers in Puerto Rico and the USVI. See ULS File No. 0011091068, Updated Description of Transaction and Public Interest Statement at 1-2. From September 29, 2022, to the present the Applicants have filed spectrum manager lease notifications to ensure the continuity of 5G mobile services provided by LMPR and LMUSVI. *Id.* Additionally, the long-term spectrum manager lease application covers the extension of a short-term spectrum manager lease agreement dated June 1, 2023, relating to certain AWS-3 spectrum held by DISH subsidiary Northstar leased to Liberty Latin America subsidiaries which expired on June 14, 2024. *Id.* at 1-2.

¹⁸ ICFS File No. ITC-ASG-20231208-00148 (assignment to LMPR); ICFS File No. ITC-ASG-20240214-00033 (assignment to LMUSVI). DISH will retain its international section 214 authority and continue to provide international service to its remaining customers pursuant to ITC-214-20191219-00197. LMPR will provide international service to its newly acquired customers pursuant to its existing international section 214 authorizations: ITC-214-19930315-00040, ITC-214-19940107-00011, and ITC-214-19980918-00669. LMUSVI will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization, ITC-214-0001101-00664.

¹⁹ ICFS File No. ISP-PDR-20240125-00001.

²⁰ *Federal Communications Commission Establishes Docket For Petition For Declaratory Ruling and Proposed Assignment of Spectrum Licenses, Assets, and Customers of Dish Network Corporation to Liberty Latin America Ltd in Puerto Rico and the U.S. Virgin Islands*, GN Docket No. 24-55, Public Notice, DA 24-167 (Feb. 23, 2024) (*Public Notice*).

²¹ See *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 & n.121 (2019) (*T-Mobile-Sprint Order*); *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 269, Report and Order, 29 FCC Rcd 6133, 6136, para. 6 (2014) (*Mobile Spectrum Holdings Report and Order*).

Commission's rules.²² If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²⁵

10. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²⁶ The Commission has determined that it may impose and enforce transaction-specific conditions that address the potential harms of a transaction.²⁷ If we are unable to find that a proposed transaction serves the public interest or if the record presents a substantial and material question of fact, then we must designate the application for a hearing.²⁸

11. *Qualifications of the Applicants.* As an initial matter, we consider whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."²⁹ No party has raised an issue regarding the basic qualifications of Liberty or DISH. Accordingly, we find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications of these Applicants under the Act and our rules, regulations, and policies.

IV. POTENTIAL PUBLIC INTEREST HARMS

A. Competitive Overview and Market Definitions

12. The market for mobile telephony/broadband services in the United States is differentiated: service providers compete not only on the basis of price, but also on non-price variables, such as plan terms and conditions, call quality, geographic coverage, and customer service.³⁰ We note that, because Liberty and DISH each sell mobile telephony/broadband services in the same geographic areas, the proposed transaction raises horizontal issues.³¹ Horizontal transactions raise potential

²² See, e.g., *Application of Verizon Communications Inc. and America Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39.

²³ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40.

²⁴ See, e.g., *Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment and Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment*, ULS File No. 0010168412, 0010168420, and 0010168439, Memorandum Opinion and Order, DA-1210, 7, para. 10 (WTB/OEA Dec. 29, 2023) (*T-Mobile-Channel 51 Order*); *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6239, para. 285.

²⁵ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10581, para. 4.

²⁶ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40.

²⁷ See, e.g., *T-Mobile-Channel 51 Order* at 7, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 40.

²⁸ See, e.g., 47 U.S.C. § 309(e); *T-Mobile-Channel 51 Order* at 7, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

²⁹ See, e.g., *T-Mobile-Channel 51 Order* at 7, para. 12; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43.

³⁰ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17006, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10612, para. 83.

³¹ See, e.g., *Applications of T-Mobile, US Inc. and Ka'ena Corporation for Consent to Transfer Control of International Section 214 Authorizations*, GN Docket No. 23-171, Memorandum Opinion and Order, DA 24-387, at (continued)

competitive concerns when the combined entity may have the incentive and the ability unilaterally to raise prices, lower quality, or otherwise harm competition in a relevant market, or if the transactions increases the likelihood of coordinated effects.³²

13. Further, spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.³³ Regarding the Commission's mobile spectrum holding policies, the Commission's fundamental goal is the preservation and promotion of competition, which in turn, leads to lower prices, improved quality, and increased innovation.³⁴ When considering the potential competitive effects of spectrum aggregation, the Commission has considered whether there would be an increased likelihood that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying advanced mobile broadband technologies, or entering the market, and also whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³⁵

14. We begin our review of the proposed transaction by defining the relevant product and geographic markets as well as the relevant input market for spectrum.³⁶ We then consider the current market participants in the mobile wireless marketplace.³⁷ We finally turn to our consideration of the likely competitive effects if the proposed license assignments are granted.³⁸

15. *Product Market.* Consistent with Commission precedent, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁹

16. *Geographic Market.* The Commission has previously found that the geographic market for wireless transactions is local, generally the Cellular Market Area (CMA).⁴⁰ However, because of the unique characteristics of Puerto Rico—the limited geographic scope and isolated nature—the Commission has found that the relevant geographic market is not any individual CMA within Puerto

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3, para. 5 (OIA/WTB Apr. 25, 2024) (*T-Mobile-Mint Mobile Order*); *Verizon-TracFone Order*, 36 FCC Rcd at 17003-04, para. 26; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611, para. 79.

³² See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17008-09, para. 38; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10625, para. 111.

³³ See, e.g., *T-Mobile-Channel 51 Order* at 10, para. 20; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617, para. 94; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88.

³⁴ See, e.g., *T-Mobile-Channel 51 Order* at 10, para. 20; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6144, para. 17.

³⁵ See, e.g., *T-Mobile-Channel 51 Order* at 10-11, para. 20; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617-18, para. 94.

³⁶ See, e.g., *T-Mobile-Channel 51 Order* at 14-15, paras. 32-33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10600-01, para. 53.

³⁷ See, e.g., *T-Mobile-Channel 51 Order* at 16, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10600-01, para. 53.

³⁸ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

³⁹ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17004, para. 27; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10601, 10603, paras. 55, 60; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6224, para. 234 & n.623.

⁴⁰ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 30; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, para. 66.

Rico, but is rather Puerto Rico as a whole.⁴¹ Similarly, the Commission analyzes the USVI as a single market rather than as two separate CMAs.⁴²

17. *Input Market for Spectrum and Market Participants.* The Commission has previously determined that the following spectrum bands, or portions thereof, meet the definition of suitable and available spectrum and should be included in the input market for spectrum: 600 MHz, 700 MHz, Cellular, Specialized Mobile Radio service (SMR), Broadband Personal Communications Service (PCS), Advanced Wireless Services (AWS) in the 1710-1755 and 2110-2155 MHz spectrum bands (AWS-1), AWS in the 1695-1710, 1755-1780, and 2155-2180 MHz spectrum bands (AWS-3), AWS in the 2000-2020 MHz and 2180-2200 MHz spectrum bands (AWS-4), AWS in the 1915-1920 and 1995-2000 MHz spectrum bands (H Block), Broadband Radio Service (BRS), Educational Broadband Service (EBS), Wireless Communications Service (WCS) spectrum, 3.7 GHz, and 3.45 GHz.⁴³ The total amount of spectrum that is currently considered suitable and available for the provision of mobile telephony/broadband services is 1,123 megahertz, with an associated spectrum screen trigger of 385 megahertz.⁴⁴ We note that 3.7 GHz and 3.45 GHz spectrum are not available for use in Hawaii, Alaska, and the U.S. territories, and therefore, the total amount of suitable and available spectrum in those territories is 743 megahertz, while the associated spectrum screen trigger is 250 megahertz.⁴⁵

18. *Market Participants.* In reviewing proposed transactions involving facilities-based mobile wireless providers, the Commission typically has focused its initial analysis of market concentration on facilities-based providers of mobile-telephony/broadband services.⁴⁶ The Commission, however, has recognized that Mobile Virtual Network Operators (MVNOs) may provide additional competitive constraints,⁴⁷ and accordingly, we will also consider the competitive role of all MVNOs in our analysis of this transaction. In particular, we note that DISH operates as an MVNO in Puerto Rico and the USVI.

⁴¹ See, e.g., *T-Mobile License LLC, Application for 2.5 GHz Band Licenses, Auction No. 108*, ULS File No. 0010206629, Memorandum Opinion and Order, DA 24-171, at 14, para. 26 (WTB/OEA Feb. 27, 2024) (*T-Mobile-Auction 108 Order*); *Applications of AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13934-35, para. 42 (2009) (*AT&T-Centennial Order*); see also *Application of AT&T Mobility Puerto Rico Inc. and Worldcall Inc. for Consent To Assign Licenses*, WT Docket No. 14-206, Memorandum Opinion and Order, 30 FCC Rcd 9763, 9768-69, para. 12 (WTB 2015).

⁴² *AT&T-Centennial Order*, 24 FCC Rcd at 13934-35, para. 42. We note that the Commission also has found that a proposed transaction's competitive effects should also be evaluated at the national level where a proposed transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 30; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, para. 66.

⁴³ See, e.g., *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15578-79, paras. 84-85, Fig. II.B.9 (2022) (*2022 Communications Marketplace Report*); *Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 31 & n.86; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, 6177-79, 6184-87, paras. 70, 100-102, 118-25.

⁴⁴ *2022 Communications Marketplace Report*, 37 FCC Rcd at 15578-79, paras. 84-85, Fig. II.B.9.

⁴⁵ *2022 Communications Marketplace Report*, 37 FCC Rcd at 15579, para. 84 & n.216.

⁴⁶ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17005-06, para. 32; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73.

⁴⁷ See, e.g., *Verizon-TracFone-Order*, 36 FCC Rcd at 17005-06, para. 32; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73; see also *2022 Communications Marketplace Report*, 37 FCC Rcd at 15565, para. 65. MVNOs do not own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based service providers and resell these services. *Id.*

B. Competitive Analysis of the Proposed Transaction

19. *Initial Screen.* Since 2004, the Commission, in reviewing license transfers and other secondary market transactions, has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis based on increased market concentration and/or increased spectrum aggregation.⁴⁸ The first part of the screen focuses on market shares and is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.⁴⁹ The second part of the screen, which is applied on a county-by-county basis, identifies those local markets where an entity post-transaction would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services.⁵⁰ Further, if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we also apply enhanced factor review.⁵¹ Finally, the Commission has adopted a separate mmW threshold to help identify certain local markets for additional review.⁵²

20. *Record.* The Applicants contend that the proposed assignment would allow Liberty to compete more effectively for customers in Puerto Rico and the USVI,⁵³ and that the proposed transaction will not adversely affect competition in any relevant market.⁵⁴ The Applicants argue that the instant transaction will allow Liberty to compete more effectively on price and quality of service resulting in more competition and lower levels of concentration in these markets.⁵⁵ The Applicants argue that the number of facilities based competitors will not be reduced in either Puerto Rico or the USVI.⁵⁶ They note that DISH does not currently provide facilities based service in either of the geographic markets and that it operates as a MVNO under the Boost Mobile and Gen Mobile brands.⁵⁷ DISH states that it does not plan to enter Puerto Rico and USVI as a facilities-based mobile wireless provider due to adverse market

⁴⁸ *Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6140-41, para. 13.

⁴⁹ The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35 & n.97; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87 & n.277. The HHI is calculated by summing the squared markets shares of all firms in the defined market. See, e.g., 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15573, para. 78.

⁵⁰ See, e.g., *T-Mobile-Mint Mobile Order* at 4-5, para. 8; *T-Mobile-Channel 51 Order* at 16, para. 36; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87.

⁵¹ See, e.g., *T-Mobile-Sprint Order*, 34 FCC Rcd at 10620-21, para. 101; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88.

⁵² See, e.g., *T-Mobile-Channel 51 Order* at 17, para. 38 & n.136; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10607, para. 70.

⁵³ Revised Public Interest Statement at 1-2.

⁵⁴ Declaration of Eisenach and Kulick at para. 7.

⁵⁵ Declaration of Eisenach and Kulick at paras. 7, 77-87.

⁵⁶ Declaration of Jeff Blum at 1-4 (Declaration of Blum); Declaration of Eisenach and Kulick at para. 7. In terms of market share, the Applicants internal estimates indicate that in Puerto Rico América Móvil holds {[]}%, Liberty Mobile holds {[]}%, T-Mobile holds {[]}%, and DISH holds {[]}% as of June 2023. Declaration of Eisenach and Kulick at para. 36, Fig. 2. Additionally, the Applicants estimate the HHI in Puerto Rico in 2023 to be {[]} and project the HHI in 2029 to be {[]} if the proposed transaction is consummated. Declaration of Eisenach and Kulick at para. 80, Fig. 14. The Applicants do not provide estimates for market shares or HHIs in the USVI.

⁵⁷ Declaration of Eisenach and Kulick at paras. 7, 15.

conditions as well as technical and regulatory hurdles.⁵⁸ The Applicants contend that the assignment would also benefit wireless competition in the continental United States by allowing DISH to finance the continued build-out of its 5G network and Liberty will provide roaming services to DISH customers in Puerto Rico, the USVI, and throughout its service territories in Latin America.⁵⁹

21. The Applicants argue that, while Liberty will hold 254 megahertz of spectrum in nine of the twelve CMAs in Puerto Rico, thus, slightly exceeding the total spectrum screen,⁶⁰ the amount of usable spectrum is actually 239 megahertz rather than 254 megahertz attributed under the spectrum screen.⁶¹ Similarly, the Applicants argue that Liberty will hold only 220 megahertz of usable spectrum in the USVI, rather than 226 megahertz.⁶² With respect to enhanced factor review of below-1-GHz spectrum, the Applicants argue that, due to interference concerns, Liberty will hold only 54 to 66 megahertz of below-1 GHz spectrum in Puerto Rico and only 65 megahertz of below-1-GHz spectrum in the USVI,⁶³ which would not exceed the below-1-GHz screen.⁶⁴ Finally, the Applicants contend that the assignment of licenses would not trigger the mmW spectrum threshold.⁶⁵

22. *Application of Two-Part Screen.* In applying the HHI screen, we note that based on the number of connections, the post-transaction HHI in Puerto Rico would be {[]} and the change in the HHI would be {[]}, while in the USVI, the post-transaction HHI would be {[]} and the change in the HHI would be {[]}. In applying the spectrum screen, as an initial matter, we note that we disagree with the Applicants and we decline to modify the amount of spectrum included in the Commission's total spectrum screen or the amount of low-band spectrum considered as part of enhanced factor review. We note that, if the transaction is approved, Liberty would hold a maximum of 266 megahertz of spectrum in Puerto Rico and 278 megahertz of spectrum in the USVI and thus trigger the total spectrum screen. In terms of spectrum below 1 GHz, Liberty would hold a maximum of 81 megahertz of below-1-GHz spectrum in Puerto Rico and 83 megahertz of below-1-GHz spectrum in USVI and thus trigger enhanced factor review. Finally, with respect to mmW spectrum, Liberty would hold 1,700 megahertz of mmW spectrum in Puerto Rico and 1,200 megahertz of mmW spectrum in USVI. Since Liberty's mmW holdings post-transaction would not exceed the mmW threshold trigger of 1,850 megahertz, we do not consider the aggregation of mmW spectrum any further.

⁵⁸ Revised Public Interest Statement at 20-23; *see also* Declaration of Eisenach and Kulick at paras. 64-76 (describing the economic, infrastructure, and financial constraints of DISH in these geographic markets).

⁵⁹ Revised Public Interest Statement at 2, 26-27; Declaration of Blum at 1, 5-6; Declaration of Eisenach and Kulick at para. 7 (stating that the proposed transaction will enhance mobile wireless competition in the continental U.S. by providing DISH with additional financial capital to continue the buildout of its new 5G network).

⁶⁰ Revised Public Interest Statement at 10-11.

⁶¹ Revised Public Interest Statement at 10-11.

⁶² Revised Public Interest Statement at 10-11. These spectrum totals exclude applications for the assignment of spectrum licenses from Puerto Rico Telephone Company, Inc. d/b/a Claro to Liberty. *See* ULS File Nos. 0010747260 and 0010747599. The Commission consented to these applications on June 10, 2024. *See id.* Including this spectrum, Liberty would hold 278 megahertz of spectrum in the USVI. Revised Public Interest Statement at 13.

⁶³ Including the below-1-GHz spectrum Liberty acquired from Claro, Liberty would hold 83 megahertz of below-1-GHz spectrum in the USVI. Revised Public Interest Statement at 14; *see also* ULS File Nos. 0010747260 and 0010747599.

⁶⁴ Revised Public Interest Statement at 11-12.

⁶⁵ Revised Public Interest Statement at 12-13.

23. As a threshold matter, we note that calculating HHI metrics is a first step in the Commission's competitive evaluation.⁶⁶ Similarly, the spectrum screen is a tool that generally prompts the Commission to undertake additional analysis; it is not a hard cap or bright-line limit on a service provider's holdings.⁶⁷ Below, we evaluate various market characteristics ordinarily considered and the consequent likelihood of harm. Consistent with existing Commission precedent, we evaluate various competitive variables that help to predict the likelihood of competitive harm if the transaction is granted.⁶⁸ These competitive variables include, but are not limited to, the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks;⁶⁹ the applicant's market share and rival firms' market shares;⁷⁰ the total amount of suitable and available spectrum;⁷¹ the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the applicant; and the spectrum holdings of each of the rival service providers and licensees.⁷²

24. *Puerto Rico.* Puerto Rico overall is a non-rural market with a population of approximately 3.3 million, and a population density of 956 people per square mile.⁷³ Liberty is currently

⁶⁶ *Verizon-TracFone Order*, 36 FCC Rcd at 17008, para. 37; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10615-16, paras. 88-89. We note that for the reasons articulated therein, we did not apply the HHI screen in either the *Verizon-TracFone Order* or the *T-Mobile-Mint Mobile Order*. *Verizon-TracFone Order*, 36 FCC Rcd at 17008, para. 37; *T-Mobile-Mint Mobile Order* at 4-5, para. 8.

⁶⁷ *T-Mobile-Channel 51 Order* at 2, para. 2; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231.

⁶⁸ *T-Mobile-Channel 51 Order* at 16, para. 38; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10622-23, para. 106; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238, para. 280.

⁶⁹ We base the coverage analysis on providers' coverage data they submitted pursuant to the Broadband Data Collection for coverage as of December 31, 2023. 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(a)(1)(A) (Broadband Data Collection).

⁷⁰ We base providers' market shares analysis on Numbering Resource Utilization/Forecast (NRUF) data, which indicate the number of phone numbers that a wireless service provider has been assigned in a particular rate center (there are approximately 18,000 rate centers in the country). See 47 CFR § 52.15(e)(5); see also *Auction 108 Long-Form Application of T-Mobile License LLC for 2.5 GHz Band Licenses, Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability (LNP) Reports Placed Into the Record, Subject to the Protective Order*, CC Docket No. 99-200, ULS File No. 0010206629, Public Notice, DA 24-100 (WTB/OEA Feb. 5, 2024). Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *2022 Communications Marketplace Report*, 37 FCC Rcd at 15569, para. 73 & n.181. We calculate the total number of wireless subscribers from the total number of assigned phone numbers reported by wireless service providers in their required NRUF reports. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. We note that the aggregation to larger geographic areas, such as to whole counties or groups of counties, reduces the level of inaccuracy inherent in combining non-coterminous areas, such as rate center areas and counties.

⁷¹ The total amount of suitable and available spectrum in the total spectrum screen is currently 1,123 megahertz and the associated total spectrum screen trigger is 385 megahertz, while the below-1-GHz trigger for enhanced factor review is 68 megahertz. Regarding high-band mmW spectrum, the Commission has made 4,950 megahertz available for licensed use, and adopted a separate threshold for mmW spectrum holdings, with an associated mmW threshold trigger of 1,850 megahertz.

⁷² See, e.g., *T-Mobile-Sprint Order*, 34 FCC Rcd at 10620-21, para. 102; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238, para. 280.

⁷³ The population density is measured by the number of people per square mile using 2020 Census data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-*

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attributed with 163 megahertz to 175 megahertz of spectrum on a county equivalent-by-county equivalent basis across Puerto Rico.⁷⁴ Through the acquisition of 91 megahertz of spectrum from DISH, including 26 megahertz of below-1-GHz spectrum,⁷⁵ Liberty would hold a maximum of 266 megahertz of spectrum on a county equivalent-by-county equivalent basis post-transaction, including a maximum of 81 megahertz of below-1-GHz spectrum.⁷⁶ T-Mobile holds 254.4 megahertz to 347.4 megahertz of spectrum, including 76.8 megahertz of below-1-GHz spectrum, while local provider, América Móvil, holds 109.5 megahertz to 144 megahertz, including 24-49 megahertz of below-1-GHz spectrum. The other nationwide service providers, AT&T and Verizon Wireless, do not operate in Puerto Rico. Finally, TerreStar holds 10 megahertz of spectrum.

25. Regarding coverage,⁷⁷ América Móvil and T-Mobile each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in Puerto Rico.⁷⁸ Further, Liberty has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps,⁷⁹ T-Mobile has significant 5G-NR population coverage and close-to-significant 5G-NR land area coverage at speeds of 7/1 Mbps, and América Móvil has significant 5G-NR population coverage at speeds of 7/1 Mbps.⁸⁰ In terms of significant market share, América Móvil holds {[]} %, while Liberty holds {[]} % and T-Mobile holds {[]} % in Puerto Rico. No other service providers have a significant market share.⁸¹

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Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, Report and Order, 19 FCC Rcd 19078, 19087-88, paras. 11-12 (2004).

⁷⁴ As noted above, 3.7 GHz and 3.45 GHz spectrum are not available for use in Hawaii, Alaska, and the territories. In these areas, the total amount of suitable and available spectrum is 743 megahertz, and the associated spectrum screen trigger is 250 megahertz.

⁷⁵ See *Wireless Spectrum by Licensee in Puerto Rico and USVI* (filed Feb. 5, 2024) (Revised Spectrum Aggregation Chart).

⁷⁶ Liberty also holds 300 megahertz of mmW spectrum and would acquire 1,400 megahertz of mmW spectrum from DISH, giving it 1,700 megahertz of mmW spectrum in total, which is under the trigger of 1,850 megahertz. Meanwhile, América Móvil holds 425 megahertz, T-Mobile holds 2,000 megahertz, and other licensees hold 400 megahertz to 425 megahertz.

⁷⁷ As noted above, we derive mobile broadband coverage from the December 2023 Broadband Data Collection data. For 4G LTE, these data are based on speed thresholds of 5 megabits per second (Mbps) download and 1 Mbps upload (5/1 Mbps) with a minimum cell edge probability of 90% and minimum cell loading of 50%. For 5G-NR, these data are based on speed thresholds of 7 Mbps download and 1 Mbps upload (7/1 Mbps) and 35 Mbps download and 3 Mbps upload (35/3 Mbps) with a minimum cell edge probability of 90% and minimum cell loading of 50%. 47 U.S.C. § 642(b)(2)(B)(ii); see also *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7479-80, paras. 44-45 (2020) (*BDC Second Report and Order*). For 4G LTE and 5G-NR, providers must submit two types of propagation maps: one that models outdoor stationary usage and one that models in-vehicle mobile usage. See *BDC Second Report and Order*, 35 FCC Rcd at 7481-82, para. 48. We report the various speed thresholds based on the outdoor stationary propagation maps.

⁷⁸ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. See, e.g., *T-Mobile-Auction 108 Order* at 19, para. 37 & n.143; *T-Mobile-Channel 51 Order* at 19, para. 42 & n.150.

⁷⁹ The Applicants estimate that Liberty currently offers 5G service to approximately {[]} % of the population in Puerto Rico. Declaration of Vargas at para. 4.

⁸⁰ In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population coverage in Puerto Rico, and América Móvil has deployed its network at these speeds to some extent.

⁸¹ Based on June 2023 NRUF data. DISH subscribers currently ride on the T-Mobile network, and they account for only approximately {[]} % of the market. T-Mobile's indicated market share excludes these DISH subscribers.

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26. *USVI.* The USVI overall is a non-rural market with a population of approximately 87,000, and a population density of 647 people per square mile.⁸² Liberty is currently attributed with 197 megahertz of spectrum in the USVI.⁸³ Through the acquisition of 81 megahertz of spectrum from DISH, including 16 megahertz of below-1-GHz spectrum, Liberty would hold 278 megahertz of spectrum post-transaction, including a maximum of 83 megahertz of below-1-GHz spectrum.⁸⁴ T-Mobile holds 136.8 megahertz of spectrum, including 46.8 megahertz of below-1-GHz spectrum, while ATN holds 279 megahertz, including 65 megahertz of below-1-GHz spectrum. The other nationwide service providers, AT&T and Verizon Wireless, do not operate in the USVI. Finally, TerreStar holds 10 megahertz of spectrum. Regarding coverage,⁸⁵ ATN has significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in the USVI, and T-Mobile has significant 4G LTE population coverage at speeds of 5/1 Mbps. Further, Liberty has significant 5G-NR population coverage at speeds of 7/1 Mbps.⁸⁶ In terms of significant market share, ATN holds {[]} %, while Liberty holds {[]} and T-Mobile holds {[]} % in the USVI. No other service providers have a significant market share.⁸⁷

27. In evaluating the likelihood of competitive harm, we begin by considering market concentration and changes in market concentration. We note that, while market concentration would increase in both of these markets as a result of the proposed transaction, DISH is an MVNO with a small market share that has declined over the past four years; consequently, we find that it currently has limited ability to competitively discipline these markets. Moreover, given the evidence in the record on the costs of deploying a 5G network, we find that it is not likely to enter either market as a facilities-based provider. As the Commission has previously found, Puerto Rico and the USVI present unique challenges to serve due to “economic conditions, insularity, and risk of natural disaster.”⁸⁸ With respect to the second part of our screen, we note that, as a result of the assignment, Liberty would trigger the total spectrum screen as well as enhanced factor review.⁸⁹ Nevertheless, we find that other licensees in Puerto Rico and the USVI also have substantial spectrum holdings, including low-band spectrum. Further, the

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The Applicants indicate that DISH has approximately {[]} subscribers in Puerto Rico as of January 31, 2024. See Supplement to ICFS File No. ITC-ASG-20231208-00148 at 1.

⁸² The population density is measured by the number of people per square mile using 2020 Census data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services*, Report and Order, 19 FCC Rcd 19078, 19087-88, paras. 11-12 (2004).

⁸³ See Revised Spectrum Aggregation Chart.

⁸⁴ Liberty also holds 200 megahertz of mmW spectrum and would acquire 1,000 megahertz of mmW spectrum from DISH, giving it 1,200 megahertz of mmW spectrum in total, which is under the trigger of 1,850 megahertz. Meanwhile, ATN holds 850 megahertz, T-Mobile holds 1,700 megahertz, and Moise holds 1,200 megahertz.

⁸⁵ The Applicants estimate that Liberty currently offers 5G service to approximately {[]} % of the population in the USVI. Declaration of Vargas at para. 4.

⁸⁶ In terms of 5G-NR coverage at speeds of 35/3 Mbps, no providers have significant population or land area coverage in the USVI.

⁸⁷ Based on June 2023 NRUF data. DISH subscribers currently ride on the T-Mobile network and they account for only approximately {[]} % of the market. T-Mobile’s indicated market share excludes these DISH subscribers. The Applicants indicate that DISH has approximately {[]} subscribers in the USVI as of January 31, 2024. See Supplement to ICFS File No. ITC-ASG-20231208-00148 at 1.

⁸⁸ *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 18-143 et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9162-63, para. 101 (2019).

⁸⁹ Liberty has been using some of this spectrum as a result of a spectrum manager leasing arrangement. See ULS File No. 0011091068. We note that discontinued access to this spectrum may have a negative effect on services that have benefitted from the increased temporary capacity. See, e.g., *T-Mobile-Channel 51 Order* at 36, para. 95.

assignment of currently fallow spectrum from DISH to Liberty will benefit consumers by putting scarce spectrum resources to use. Based on the factors ordinarily considered, we find it unlikely that the proposed assignment of customers and spectrum to Liberty in either of these markets would allow Liberty to harm the public interest through raising rivals' costs, foreclosing entry by competitors, or raising prices, reducing service quality or otherwise harming consumers. Given the totality of the circumstances, we find that, post-transaction, the likelihood of competitive harm in these particular markets is low.

V. POTENTIAL PUBLIC INTEREST BENEFITS

28. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms “if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products.”⁹⁰ Moreover, the Commission will find a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction and likely could not be accomplished in the absence of the transaction⁹¹—and verifiable.⁹² Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.⁹³ Further, the Commission is “more likely to find marginal cost reductions to be cognizable than reductions in fixed cost”⁹⁴ as, in general, reductions in marginal cost are more likely to result in lower prices for consumers. In addition, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.⁹⁵ The Commission applies a “sliding scale approach” to evaluating benefit claims.⁹⁶ Under this approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁹⁷ Conversely,

⁹⁰ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹¹ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹² See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹³ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹⁴ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹⁵ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

⁹⁶ See, e.g., *T-Mobile-Channel 51 Order*, at 33, para. 89; *SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent to Assign Licenses and Spectrum Lease Authorizations and to Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, WT Docket No. 15-262, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3648, para. 35 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations; Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2793, para. 132 (WTB/IB 2014) (*AT&T-Leap Order*).

⁹⁷ See, e.g., *T-Mobile-Channel 51 Order* at 33, para. 89; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132.

where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.⁹⁸

29. *Record.* The Applicants argue that the proposed transaction will generate substantial synergies, economic efficiencies, and public interest benefits.⁹⁹ The Applicants assert that the acquisition of the spectrum licenses in Puerto Rico and the USVI, as a result of the transaction, will allow more customers to access Liberty's wireless network simultaneously at higher throughput speeds.¹⁰⁰ Specifically, the Applicants assert that the instant transaction significantly improves the engineering capacity and network capabilities to the benefit of customers.¹⁰¹ Liberty asserts that its current spectrum holdings are insufficient to accommodate the rapid growth in traffic resulting from the transition to 5G and increased usage of data-intensive services like video streaming, gaming, and the Internet of Things applications.¹⁰² Liberty contends that improvements in network capacity to date have been achieved by the short term leasing of a portion of the spectrum involved in the proposed transaction.¹⁰³ The Applicants contend that these capacity improvements cannot be achieved absent this transaction.¹⁰⁴

30. The Applicants contend that in addition to having more spectrum, it is important to have larger and contiguous spectrum blocks, and that more contiguous and unpaired spectrum blocks allow for gains in statistical multiplexing.¹⁰⁵ The Applicants state that wider channels lower network density and require fewer base stations and lower capital expenditure spending.¹⁰⁶ Liberty states that the assignment would allow Liberty to reduce capital expenditures providing marginal cost efficiencies while providing advanced services at higher speeds and improved coverage.¹⁰⁷ Additionally, the Applicants assert that the acquisition of the instant spectrum will expand several blocks of Liberty's contiguous spectrum, enabling Liberty to achieve increased efficiencies.¹⁰⁸ The Applicants argue that Liberty critically needs the instant spectrum to increase the capacity of its mobile system to handle the rapidly increasing data volume resulting from 5G.¹⁰⁹ The Applicants state that the instant spectrum is necessary to maintain and improve

⁹⁸ See, e.g., *T-Mobile-Channel 51 Order* at 33-34, para. 89; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35.

⁹⁹ Revised Public Interest Statement at 14, Declaration of Eisenach and Kulick at paras. 7, 97-106.

¹⁰⁰ Revised Public Interest Statement at 1-2, 14-19; Declaration of Vargas at paras. 2-21.

¹⁰¹ Revised Public Interest Statement at 1-2, 14-19.

¹⁰² Declaration of Eisenach and Kulick at paras. 7, 42-53; Declaration of Naji N. Khoury Rizk at paras. 2-6 (Declaration of Rizk).

¹⁰³ Declaration of Eisenach and Kulick at paras. 7, 106 (stating that Liberty has managed to achieve significant increases in speed through its partial utilization and short-term lease of the AWS-3 and AWS-4 spectrum); Declaration of Vargas at para. 18.

¹⁰⁴ Declaration of Eisenach and Kulick at paras. 32-53; Declaration of Rizk at para. 4 (stating that without the spectrum from the instant transaction, Liberty will be unable to handle increasing traffic and will not be able to compete with T-Mobile and Claro for new customers); Declaration of Vargas at paras. 2-21.

¹⁰⁵ Declaration of Vargas at paras. 3, 19.

¹⁰⁶ Declaration of Vargas at paras. 3, 19.

¹⁰⁷ Revised Public Interest Statement at 1-2, 25-26.

¹⁰⁸ Declaration of Vargas at para. 19.

¹⁰⁹ Declaration of Vargas at paras. 3-5; 32; Declaration of Eisenach and Kulick at para. 7 (asserting that Liberty's post-transaction spectrum holdings would remain below those of T-Mobile in Puerto Rico and would be comparable with Viya in the USVI).

the quality of Liberty's 5G service to compete with T-Mobile.¹¹⁰ In addition to higher spectrum efficiencies, the Applicants contend that the instant transaction will lower Liberty's capital expenditures for Centralized Radio Access Network (C-RAN) and macro sites in these geographic markets.¹¹¹

31. The Applicants contend that while DISH is the largest of the three MVNOs in Puerto Rico, the spectrum assignment and transfer of Boost and Gen Mo customers will benefit Liberty and Boost/ Gen Mo customers by allowing for a better user experience and increased network and spectrum efficiencies.¹¹² DISH asserts that expansion as a facilities-based competitor in these geographic markets presents technical barriers due to its open radio access network cloud-based network in the instant markets.¹¹³ The Applicants also note that the spectrum licenses being assigned are subject to build out requirements.¹¹⁴ The Applicants conclude that the proposed transaction will provide Liberty with the spectrum resources necessary to increase network capacity, improve service quality, and compete effectively with the other mobile network operators in the markets.¹¹⁵

32. In addition to the spectrum licenses, Liberty will acquire from DISH its Boost Mobile and Gen Mobile subscribers in Puerto Rico and the USVI, comprising approximately 120,000 subscribers at the time of filing.¹¹⁶ The Applicants contend that DISH's subscriber base is shrinking in the affected areas, and that the instant transaction is important to maintaining competition and subscribership.¹¹⁷ The Applicants state that Liberty anticipates a seamless conversion of Boost and Gen Mo subscribers over a period of several months in 2024.¹¹⁸ Further, to the extent that the mobile devices of any of these Boost or Gen Mo subscribers are incompatible with the Liberty system, the Applicants explain that they will pursue an operating software update for the subscribers.¹¹⁹ Liberty states that, if necessary, subscribers experiencing operating issues will be provided with new mobile devices of equal or greater value to their devices at no charge.¹²⁰ Liberty explains that it will notify Boost and Gen Mo subscribers of this conversion and provide information regarding the conversion process and customer options through a

¹¹⁰ Declaration of Vargas at para. 32; Declaration of Eisenach and Kulick at para. 35-38, 42-53 (noting that T-Mobile's share of the mobile wireless market in Puerto Rico has increased significantly in both postpaid and prepaid subscribers).

¹¹¹ Declaration of Vargas at paras. 28-32.

¹¹² Declaration of Eisenach and Kulick at paras. 7, 97-98; 102-109 (stating that the benefits include higher speeds, improved network quality, increased local competition in the prepaid and postpaid markets; and increased roaming for DISH customers in the continental United States on the Liberty network in Latin America and the Caribbean, including Puerto Rico and USVI, at favorable rates).

¹¹³ Declaration of Blum at 9 (asserting that neither Puerto Rico nor USVI has an Amazon Web Service (AWS) Local Zone, and DISH would need to develop an alternate way to operate its network in Puerto Rico and USVI, at an additional cost and with potential network issues, because DISH's Open Radio Access Network (RAN) is a cloud-based RAN that is built on the AWS platform and relies upon AWS Local Zones that minimize latency issues).

¹¹⁴ Declaration of Eisenach and Kulick at paras. 21-22.

¹¹⁵ Declaration of Eisenach and Kulick at para. 7; Declaration of Rizk at para. 16 (asserting that the instant spectrum would allow Liberty to experience an increased throughput in the near term with respect to the acquired AWS-3 and ASW-4 spectrum).

¹¹⁶ Revised Public Interest Statement at 2, 27; Declaration of Eisenach and Kulick at paras. at 23, 30.

¹¹⁷ Revised Public Interest Statement at 20; Declaration of Eisenach and Kulick at paras. at 23, 65-76 (noting a rapid decline in subscribership in Puerto Rico and in the USVI).

¹¹⁸ Revised Public Interest Statement at 27; Declaration of Rizk at para. 17.

¹¹⁹ Revised Public Interest Statement at 27-28; Declaration of Rizk at para. 17.

¹²⁰ Revised Public Interest Statement at 27; Declaration of Rizk at para. 17.

dedicated website, Facebook page, and emails to customers.¹²¹ Liberty asserts that the acquisition of the Boost and Gen Mo subscribers in Puerto Rico and USVI will allow the provider to reach a critical mass of subscribers, increasing competition among mobile providers for prepaid subscribers.¹²² Additionally, the Applicants contend Liberty will make its sales and service operations fully available to the Boost and Gen Mo subscribers to assist in the transition.¹²³

33. *Discussion.* We have reviewed the Applicants' claimed transaction-specific benefits regarding Liberty's spectrum need, spectrum contiguity, network capacity increases, and competitive benefits in these unique geographical markets. We agree with the Applicants that the proposed transaction will generate synergies, some economic efficiencies, and additional public interest benefits in Puerto Rico and the USVI. We credit as a public interest benefit that Liberty consumers will generally receive greater capacity benefits and expanded competition from this deployment, and that Liberty, through this spectrum acquisition, will be able to build out these bands, continue to deploy 5G and advanced services, and enhance its 5G network in these markets. We further find that the proposed transaction would allow Liberty to provide a better user experience to its customers, including the Boost and Gen Mo customers assigned as a result of this transaction.¹²⁴ We therefore find that the record provides support for the Applicants' assertions that the proposed transaction would result in certain verifiable, transaction-specific public interest benefits.

34. We also agree with the Applicants that the assignment of Boost and Gen Mo subscribers is in the public interest and that subscribers will have the benefit of Liberty's sales and service operations within Puerto Rico and the USVI during the customer transition. The Applicants have provided sufficient transition planning on the record and will utilize a variety of customer outreach to ensure that the Boost and Gen Mo subscribers are able to transition from the current MVNO service offered by DISH to Liberty's service in these areas. We note that the customer transition will occur throughout 2024 and Liberty has indicated that "if necessary, subscribers experiencing operating issues will be provided with new mobile devices of equal or greater value to their devices at no charge."¹²⁵ We agree that the proposed assignment and transition of Boost and Gen Mo subscribers may improve Liberty's position to compete for prepaid subscribers thereby increasing competition among mobile providers for prepaid subscribers in Puerto Rico and in the USVI.¹²⁶

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

35. 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.¹²⁷ The Commission has recognized its public interest analysis benefits

¹²¹ Revised Public Interest Statement at 27-28; Declaration of Rizk at para. 17.

¹²² Revised Public Interest Statement at 28; Declaration of Rizk at para. 18.

¹²³ Revised Public Interest Statement at 28; Declaration of Rizk at para. 18.

¹²⁴ See, e.g., *T-Mobile-Channel 51 Order* at 36, para. 94.

¹²⁵ Revised Public Interest Statement at 27.

¹²⁶ Revised Public Interest Statement at 28.

¹²⁷ *T-Mobile-Sprint Order*, 34 FCC Rcd at 10732, para. 349; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). See also *Process Reform for Executive Branch Review of*

(continued)

from input by the Executive Branch agencies that have expertise in these issues. The Commission accords deference to the expertise of the Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.¹²⁸ The Commission, however, makes an independent decision on the application based on the record in the proceedings.¹²⁹

36. Under our rules and procedures, the Commission will generally refer petitions for section 310(b) foreign ownership rulings for common carrier wireless applicants and licensees and all the associated applications to the 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/Petitioners.¹³⁰ Liberty Latin America asserts that the Commission should not refer the applications and Petition to the Executive Branch agencies.¹³¹ Liberty Latin America states that on July 1, 2020, it entered into a comprehensive letter of agreement (2020 LOA) with the Department of Justice on behalf of the Executive Branch agencies in connection with the review of Petitioner's 2020 transaction with AT&T Inc.¹³² Liberty Latin America states that it has complied with the 2020 LOA and will continue to comply with the 2020 LOA in the future.¹³³ It further states that "[t]he only relevant change in LLA's foreign ownership since LLA concluded the 2020 LOA with the Executive Branch is the increased indirect voting and equity interest of LiLAC Ventures in the Controlling U.S. Parent."¹³⁴

37. We exercised our discretion and did not formally refer the applications and Petition to the Executive Branch agencies.¹³⁵ As Liberty Latin America states, the only change in its foreign ownership is an increase of LiLAC Ventures Ltd.'s equity and voting interests from 60% to 66.39%. Liberty Latin America asserts that it is in compliance with the 2020 LOA. Liberty Latin America further stipulates that it will continue to comply with the 2020 LOA upon the Commission's grant of the Petition. Although we

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Certain FCC Applications and Petitions Involving Foreign Ownership, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Process Order*).

¹²⁸ *T-Mobile-Sprint Order*, 34 FCC Rcd at 10733, para. 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) (*2016 Foreign Ownership Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62.

¹²⁹ *T-Mobile-Sprint Order*, 34 FCC Rcd at 10733, para. 349; *Foreign Participation Order*, 12 FCC Rcd at 23921, para. 66; *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5762, para. 34 (2013) ("While the Commission has exercised its discretion to rely substantially on the views of the Executive Branch agencies for their expertise on matters of national security, law enforcement, foreign policy and trade policy in cases involving foreign investment in U.S. common carrier and aeronautical licensees, we do not believe it would be appropriate for us essentially to delegate this statutory responsibility to such agencies.").

¹³⁰ *See Executive Branch Review Process Order*, 35 FCC Rcd at 10936, paras. 25, 30; 47 CFR § 1.40001(a)(1).

¹³¹ Petition at 10-11.

¹³² Petition at 10. *See* Letter from John Winter, Senior Vice President, Chief Legal Officer & Secretary, LLA, to Assistant Attorney General for National Security, Department of Justice and Deputy Chief Information Officer for Cybersecurity, Department of Defense, WC Docket No. 19-384, File Nos. ISP-PDR-20191114-00009 et al. (July 1, 2020).

¹³³ Petition at 10.

¹³⁴ *Id.*

¹³⁵ *Public Notice* at 5. *See* 47 CFR § 1.40001(a).

did not formally refer the applications and Petition, per standard practice, we did provide a courtesy copy of the Public Notice to the Executive Branch agencies.¹³⁶ The agencies did not file any comments.

38. In order to address national security and law enforcement issues related to the proposed transaction, we condition grant of the applications and Petition on compliance by Liberty Latin America with the commitments and undertakings set forth in the 2020 LOA.¹³⁷ A failure to comply and/or remain in compliance with the 2020 LOA shall constitute a failure to meet a condition of this declaratory ruling and the underlying authorizations and licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to comply and/or remain in compliance with the 2020 LOA may also result in monetary sanctions or other enforcement action by the Commission.

VII. SECTION 310(B) FOREIGN OWNERSHIP AND DECLARATORY RULING

A. Foreign Ownership

39. Liberty Latin America (Petitioner) filed a petition for declaratory ruling, pursuant to section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules,¹³⁸ to permit indirect foreign ownership of Liberty Mobile Inc., the controlling U.S. parent of LMPR and LMUSVI (together, Wireless Licensees) in excess of the 25% benchmarks as specified in section 310(b)(4) of the Act.¹³⁹

40. On October 27, 2020, the Commission issued a declaratory ruling to Liberty Latin America that, among other things, permitted 100% aggregate foreign ownership of Liberty Mobile, the controlling U.S. parent, along with specific approval for LiLac Ventures Ltd., a Cayman Islands entity, to hold 60% indirect equity and voting interests in Liberty Mobile.¹⁴⁰ On December 28, 2023, Liberty Latin America notified the Commission pursuant to section 1.5004(f) of the Commission's rules to report that LiLAC Ventures Ltd.'s indirect voting and equity interests increased from 60% to 66.39% in Liberty Mobile, the controlling parent of the Wireless Licensees.¹⁴¹ Consequently, Liberty Latin America filed the Petition requesting a new declaratory ruling.

41. According to the Petition, the Wireless Licensees are wholly owned by Liberty Mobile,¹⁴² a Delaware entity.¹⁴³ Liberty Mobile is wholly owned by LLA Holdco LLC, which, in turn, is wholly owned by LCPR Ventures LLC, all of which are Delaware limited liability companies.¹⁴⁴ LCPR Ventures LLC is wholly owned by Liberty Communications PR Holding LP, a Delaware limited partnership.¹⁴⁵ The interest holders in Liberty Communications PR Holding LP are: Leo Cable LLC, a Delaware limited

¹³⁶ *Public Notice* at 5. See *Executive Branch Review Process Order* at 10939, para 30, n.81.

¹³⁷ A copy of the 2020 LOA is publicly available and may be viewed on the FCC website through ICFS by searching for ISP-PDR-20240409-00002 and accessing "Other filings related to this application" from the Document Viewing area.

¹³⁸ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1).

¹³⁹ See Petition.

¹⁴⁰ See *Applications of Liberty Latin America Ltd. and AT&T Inc., for Consent to the Transfer of Control of the Licenses, Authorizations, and Spectrum Lease Held by AT&T Mobility Puerto Rico Inc. and AT&T Mobility USVI Inc. to Liberty Latin America Ltd.*, Memorandum Opinion and Order and Declaratory Ruling, 36 FCC Red 2328, 2344-45, para. 42 (WTB, WCB & IB 2020).

¹⁴¹ Letter from Thomas F. Bardo and Robert L. Hoegle, Counsel for Liberty Latin America, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20191114-00009 (filed Dec. 28, 2023). 47 CFR § 1.5004(f).

¹⁴² Liberty Mobile was formerly known as Beach Holding Corporation. Petition at 2, n.3.

¹⁴³ Petition, Section 1.5001(h)(2) Exhibit.

¹⁴⁴ Petition at 6, Section 1.5001(h)(2) Exhibit.

¹⁴⁵ *Id.* at 6.

liability company (0% equity, 100% voting); LiLAC Ventures Ltd., a Cayman Islands entity (66.39% equity, 0% voting); and LiLAC Communications Inc., a Delaware entity (33.61% equity, 0% voting).¹⁴⁶ Leo Cable LLC is owned by LiLAC Ventures Ltd. (66.39% equity, 66.39% voting) and LiLAC Communications Inc. (33.61% equity and 33.61% voting). In turn, LiLAC Ventures Ltd. is wholly owned by LiLAC Services Ltd., a Bermuda holding company.¹⁴⁷ LiLAC Communications Inc. is wholly owned by LGI International Holdings, LLC, a Colorado limited liability company, which is wholly owned by LiLAC Services Ltd.¹⁴⁸ LiLAC Services Ltd. is wholly owned by Liberty Latin America Ltd., a Bermuda entity which is owned by Genesis Investment Management, LLP, a United Kingdom limited liability partnership (2.4% voting) and John Malone, a U.S. citizen (27% voting, 6.4% equity).¹⁴⁹

42. Pursuant to section 1.5001(i) of the Commission's rules,¹⁵⁰ Liberty Latin America requests that the Commission specifically approve the direct and/or indirect foreign equity and voting interests in Liberty Mobile, the controlling U.S. parent of the Wireless Licensees, by foreign-organized entities as follows:

Liberty Latin America Ltd. (100% equity, 100% voting) (Bermuda);
LiLAC Services Ltd. (100% equity, 100% voting) (Bermuda);
LiLAC Ventures Ltd. (66.39% equity, 66.39% voting) (Cayman Islands); and
Genesis Investment Management, LLP (2.4% equity, 2.4% voting) (United Kingdom).

43. Pursuant to section 1.5001(k) of the Commission's rules,¹⁵¹ Liberty Latin America also requests advance approval for LiLAC Ventures Ltd. to increase its indirect interest into Liberty Mobile, the controlling U.S. parent, up to 100% equity and voting interests at some future time.¹⁵² Further, Liberty Latin America seeks advance approval for Genesis Investment Management, LLP to increase its indirect equity and voting interests in Liberty Mobile up to a 15% non-controlling interest at some future time.¹⁵³ The Petitioner asserts that the public interest would be served by granting the Petition.¹⁵⁴ Finally, Liberty Latin America requests approval of up to an aggregate 100% indirect foreign equity and voting interest in Liberty Mobile.

44. The Petitioner asserts that the public interest would be served by granting the Petition.¹⁵⁵ No comments were received on the foreign ownership request.

B. Declaratory Ruling

45. Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting foreign ownership of Liberty Mobile, the controlling U.S. parent of LMPR and LMUSVI, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Petition subject to the conditions set out herein. This ruling authorizes 100% aggregate foreign ownership of Liberty

¹⁴⁶ *Id.* at 7.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Petition at 8-9.

¹⁵⁰ 47 CFR § 1.5001(i).

¹⁵¹ 47 CFR § 1.5001(k).

¹⁵² Petition at 10.

¹⁵³ *Id.*

¹⁵⁴ Petition at 3-4.

¹⁵⁵ Petition at 3-4.

Mobile, as the controlling U.S. parent of the Wireless Licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.¹⁵⁶

46. In addition, pursuant to section 1.5001(i) of the rules, we approve the foreign equity and voting interests that would be held indirectly in Liberty Mobile by each of the above-listed foreign entities in the amounts specified above. We also approve Petitioner's request for advance approval, pursuant to section 1.5001(k), permitting: (1) LiLAC Ventures Ltd. to increase its indirect interest into Liberty Mobile up to 100% equity and voting interests at some future time; and (2) Genesis Investment Management, LLP to increase its indirect equity and voting interests in Liberty Mobile up to a 15% non-controlling interest at some future time.

47. Finally, under this ruling, Liberty Latin America has an affirmative duty to monitor its foreign equity and voting interests, calculate its interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the rules,¹⁵⁷ and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.¹⁵⁸ A failure to comply and/or remain in compliance with a condition of this declaratory ruling shall constitute grounds for declaring it terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

VIII. CONCLUSION

48. After careful analysis of the potential competitive effects of the proposed assignments from DISH to Liberty, we find that the likelihood of competitive harm is low. We find that the transaction will not be likely to lead to an undue increase in the market share of Liberty, nor do we find that the increase in Liberty Mobile's spectrum holdings, though above the spectrum screen trigger, is a reason for denying the applications in this case. We further find some public interest benefits are likely to be realized as a result of the transaction, such as enhanced competition in Puerto Rico and the USVI by providing Liberty with additional spectrum resources to increase network capacity, improve service quality, and compete more effectively. Accordingly, we approve the assignment applications.¹⁵⁹

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

¹⁵⁷ 47 CFR §§ 1.5002-1.5003.

¹⁵⁸ 47 CFR § 1.5004, note to paragraph (a).

¹⁵⁹ In 2020, the Bureau granted DISH extensions of time to meet its build-out deadlines for these and other licenses conditioned on, *inter alia*, DISH receiving prior FCC approval before assigning or transferring control of certain licenses, including the AWS-4 and 600 MHz licenses at issue here. *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations; Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, Order of Modification and Extension of Time to Construct, 35 FCC Rcd 9580 (WTB 2020). This order constitutes the prior approval required by the Order of Modification.

(continued)

49. We also find the public interest would not be served by prohibiting foreign ownership of Liberty Mobile, the controlling U.S. parent of LMPR and LMUSVI, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We therefore grant the petition for declaratory ruling filed by Liberty Latin America, subject to the conditions set out above.

IX. ORDERING CLAUSES

50. ACCORDINGLY, having reviewed the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d) and sections 1.948 and 63.24 of the Commission's rules, 47 CFR §§ 1.948 and 63.24, and pursuant to the authority delegated under sections 0.19, 0.131, 0.331 and 0.351 of the Commission's rules, 47 CFR §§ 0.19, 0.131, 0.331 and 0.351, the applications to assign the licenses and authorizations listed in Appendix A ARE GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

51. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j) and 310(b)(4) of the Act, 47 U.S.C. §§ 154(i), 154(j), and 310(b)(4), and sections 1.5001-1.5004 of the Commission's rules, 47 CFR §§ 1.5001-1.5004, the Petition for Declaratory Ruling filed by Liberty Latin America IS GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

52. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, 303(r), 309, 310(b), 310(d), grant of the applications and Petition for Declaratory Ruling IS CONDITIONED UPON compliance by Liberty Latin America Ltd. with the Letter of Agreement from John Winter, Senior Vice President, Chief Legal Officer & Secretary, Liberty Latin America Ltd., to Assistant Attorney General for National Security, Department of Justice, and Deputy Chief Information Officer for Cybersecurity, Department of Defense, dated July 1, 2020. Any failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

(Continued from previous page)

In determining that granting the applications will serve the public interest, we have taken into account the extent to which the proposed transaction will promote competition and avoid unjust enrichment. *See T-Mobile-Sprint Order*, 34 FCC Rcd at 10742-43, para. 376. As described throughout the body of this order, we find that granting the applications will promote competition. With regard to unjust enrichment, we accept DISH's statement that it does not plan to enter Puerto Rico and USVI as a facilities-based mobile wireless provider regardless whether the applications are approved, and we agree with DISH that approving the assignment would also benefit wireless competition in the continental United States by allowing DISH to finance the continued build-out of its 5G network. We also note that DISH has met its build-out commitments to date. *See Letter from Joel Taubenblatt, Chief Wireless Telecommunications Bureau, FCC, to Jeffrey Blum, Executive Vice President, DISH Corp (Sept. 29, 2023)*. We therefore conclude that granting these applications will result in little or no unjust enrichment to DISH.

53. IT IS FURTHER ORDERED that pursuant to section 1.102 of the Commission's rules, 47 CFR § 1.102, this Memorandum Opinion and Order and Declaratory Ruling SHALL BE EFFECTIVE upon release. 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 release date of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Troy F. Tanner
Acting Chief
Office of International Affairs

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

APPENDIX A

Applications to Assign Licenses and Authorizations Held by DISH Network Corporation

INTERNATIONAL SECTION 214 AUTHORIZATIONS

The following applications for consent to the assignment of assets from DISH to LMPR and LMUSVI related to the provision of international service pursuant to section 214 of the Act are granted:

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20231208-00148	DISH Network Corporation	ITC-214-20191219-00197 ¹
ITC-ASG-20240214-00033	DISH Network Corporation	ITC-214-20191219-00197 ²

PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

The following petition for declaratory ruling is granted: ISP-PDR-20240125-00001.

SECTION 310(d) APPLICATIONS

<u>ULS File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0010802260	ParkerB.com Wireless L.L.C.	WQZM251
0010802273	ParkerB.com Wireless L.L.C.	WQZM397
0010802291	Manifest Wireless L.L.C.	WQJZ313
0010802297	DBSD Corporation	T070272174
0010802307	Gamma Acquisition L.L.C.	T060430174
0010802312	Wetterhorn Wireless L.L.C.	WRMA241
0010802323	American H Block Wireless L.L.C.	WQTX373
0010802341	Northstar Wireless, LLC	WQWQ740
0010802391	Window Wireless L.L.C.	WRHM935
0010802384	Window Wireless L.L.C.	WRHM915

¹ DISH will retain its international section 214 authority and continue to provide international service to its remaining customers pursuant to ITC-214-20191219-00197. LMPR will provide international service to its newly acquired customers pursuant to its existing international section 214 authorizations: ITC-214-19930315-00040, ITC-214-19940107-00011, and ITC-214-19980918-00669.

² DISH will retain its international section 214 authority and continue to provide international service to its remaining customers pursuant to ITC-214-20191219-00197. LMUSVI will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization, ITC-214-20011101-00664.

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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Requests for Review of Decisions of the Universal	)	
Service Administrative Company by	)	
	)	
AmeriMex Communications Corp., <i>et al.</i>	)	
	)	
Lifeline Universal Service Support Mechanism	)	

ORDER

Adopted: August 8, 2024

Released: August 8, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny six requests¹ seeking review of decisions made by the Universal Service Administrative Company (USAC) concerning upward revisions of reimbursement claims related to the Wireline Competition Bureau's (Bureau) *Seventh COVID-19 Waiver Order*.²

II. BACKGROUND

2. The Lifeline program provides support for communications services provided by eligible telecommunications carriers (ETCs) to qualifying low-income consumers.³ An ETC may only receive support for the number of actual qualifying low-income consumers it serves.⁴ ETCs "must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."⁵ Under sections 54.405 and 54.407 of the Commission's rules, ETCs may only claim Lifeline

¹ Request for Review by AmeriMex Communications Corp. d/b/a SafetyNet Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (AmeriMex Request for Review); Request for Review by Assist Wireless, LLC, WC Docket No. 11-42 (filed Jan. 12, 2024) (Assist Request for Review); Request for Review by Boomerang Wireless, LLC d/b/a enTouch Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Boomerang Request for Review); Request for Review by Easy Telephone Services Company d/b/a Easy Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Easy Request for Review); Request for Review by Global Connection Inc. of America d/b/a StandUp Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Global Request for Review); Request for Review by i-Wireless, LLC d/b/a Access Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (i-Wireless Request for Review) (collectively, Requests for Review and the requesting parties are referred to herein as Petitioners).

² *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 36 FCC Rcd 4448 (WCB 2021) (*Seventh COVID-19 Waiver Order*).

³ See 47 U.S.C. § 254(b)(1), (3); 47 CFR § 54.401.

⁴ 47 CFR § 54.407(a) ("Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month.").

⁵ 47 CFR § 54.410(a).

support for Lifeline subscribers who do not pay an end-user fee for their service if that subscriber has recently used that service.⁶ Section 54.405(e) of the rules requires that when a subscriber who does not pay an end-user fee fails to use their Lifeline service for 30 consecutive days, the ETC must provide the subscriber with a notice period of 15 days to cure their non-usage by using the service or else be de-enrolled.⁷ ETCs shall only continue to receive reimbursement for Lifeline service provided to subscribers who do not pay an end-user fee if the subscriber has used the service within the last 30 days or cured their non-usage.⁸

3. In March 2020, the Bureau issued the first in a series of orders waiving certain Lifeline rule requirements in an effort to address the increased importance of access to affordable communications services for low-income households during the COVID-19 pandemic.⁹ On March 30, 2020, in its second such order, the Bureau temporarily waived the Lifeline usage requirements to help ensure that no Lifeline subscribers were involuntarily de-enrolled.¹⁰ The Bureau issued its *Seventh COVID-19 Waiver Order* on February 24, 2021.¹¹ That order declined to further extend the waiver of the non-usage rule.¹² However, to provide an orderly re-start of the non-usage notice process to subscribers, the order “extend[ed] the waiver and require[d] ETCs to send cure notices to subscribers who, as of May 1, 2021, ha[d] not used their service in the previous 30-days.”¹³

4. *Requests for Review.* In April 2022, each Petitioner submitted upward revisions to their April 2021 reimbursement claims to include subscribers who, on May 1, 2021, had not used their service for 30 days and did not cure that non-usage during a subsequent cure period.¹⁴ On May 24, 2022, USAC rejected Petitioners’ upward revisions.¹⁵ On July 25, 2022, Petitioners requested that USAC review its rejections.¹⁶ On November 16, 2023, USAC denied Petitioners’ appeal.¹⁷ On January 12, 2024, Petitioners filed their Requests for Review of USAC’s decision with the Bureau.¹⁸

⁶ See 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

⁷ 47 CFR § 54.405(e)(3).

⁸ 47 CFR § 54.407(c)(2).

⁹ See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 35 FCC Rcd 2729 (WCB 2020).

¹⁰ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 35 FCC Rcd 2950, 2950-52, paras. 2, 6-8 (WCB 2020) (*Second COVID-19 Waiver Order*).

¹¹ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 36 FCC Rcd 4448 (WCB 2021) (*Seventh COVID-19 Waiver Order*).

¹² *Id.* at 4451, para. 9.

¹³ *Id.* at 4451, para. 10.

¹⁴ Requests for Review, at 5. Petitioners’ Requests for Review are largely identical and so citations are the same across all requests, unless otherwise noted. One difference between requests is that only some of the requests identify the specific amount of additional reimbursement sought. See AmeriMex Request for Review, at 5; i-Wireless Request for Review, at 6. For the purposes of this Order, the Bureau did not identify any material differences between the Requests for Review.

¹⁵ Requests for Review, at 1.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 1.

¹⁸ We accept the Requests for Review as filed consistent with Commission rules. See 47 CFR § 54.719. The Bureau has the authority to act on the Requests for Review, where, as is the case here, the request does not raise novel questions of law or fact. 47 CFR § 54.722.

5. In the Requests for Review, Petitioners seek to vacate USAC's denial of Petitioners' requests for upward revisions of their April 2021 Lifeline reimbursement claims.¹⁹ Specifically, Petitioners argue that the final non-usage waiver period announced in the *Seventh COVID-19 Waiver Order* extended through May 1, 2021, and that the non-usage cure period did not begin until May 2, 2021, at the earliest. The Petitioners state that USAC erred when it determined that the non-usage cure period for subscribers who, as of May 1, 2021 had not used their service in the prior 30 days, began on May 1, 2021.²⁰ Petitioners argue that a plain reading of the *Seventh COVID-19 Waiver Order* demonstrates the relevant waiver period included May 1, 2021 and subscribers who, as of May 1, 2021, had not used their service for the past 30 days were not yet in a non-usage cure period. Therefore, the Petitioners contend that they may claim all subscribers that appeared on the May 1, 2021 snapshot report.²¹ Petitioners further claim that under the Commission's computation of time rules and the *2016* and *2019 Lifeline Orders*, since the end of the waiver period included May 1, cure notices were not required to be sent until the following day, May 2, and that the 15 day cure period did not begin until May 3, the day following the day on which cure notices were to have been sent.²² In addition, Petitioners claim that extending the waiver through May 1, 2021 serves the public interest by giving subscribers an extra day to use their service and avoid improper de-enrollment.²³ Finally, Petitioners contend that "several major Lifeline providers" claimed and received April 2021 reimbursements based on the May 1, 2021 snapshot and had not had their reimbursements rescinded, although Petitioners do not provide further support for this claim.²⁴

III. DISCUSSION

6. We deny the Petitioners' Requests for Review and affirm USAC's decision to deny Petitioners' request for upward revisions of their April 2021 reimbursements. We find that permitting Petitioners to make the requested upward revisions would violate the Commission's rules by providing reimbursement for Lifeline subscribers who did not pay an end-user fee for their service and who failed to use their Lifeline service for at least 30 days prior to the end of the waiver and during the 15-day cure period that began on May 1, 2021.

7. We reject Petitioners' first argument that a plain reading of the *Seventh COVID-19 Waiver Order* demonstrates that the earliest date the cure period could have started for impacted subscribers was on May 2, 2021.²⁵ To the contrary, the order was clear that the non-usage cure period was to begin on May 1, 2021. Specifically, when the order stated that we "require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the *previous* 30-days,"²⁶ the Bureau plainly meant that the 30 day period during which subscribers could have demonstrated usage

¹⁹ Requests for Review, at 1.

²⁰ *Id.* at 2.

²¹ *Id.* at 7-9. Generally, "[ETCs] must rely on the plain language of the non-usage rules, as codified by the Commission, which state that ETCs will not be eligible to be reimbursed for those subscribers who are in a 15-day non-usage cure period regardless of whether the subscriber's 15-day cure period includes the snapshot date." *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10937-38, para. 120 (2019) (*2019 Lifeline Reform Order*).

²² Requests for Review, at 8-12.

²³ *Id.* at 8-9, 13-14.

²⁴ *Id.* at 2.

²⁵ *Id.* at 8-9.

²⁶ *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 (emphasis added).

ended the day before May 1 (on April 30), and therefore the waiver would not extend into the month of May, and the cure period for those subscribers would begin May 1.²⁷

8. We further reject Petitioners' argument that providers were not required to send non-usage cure notices to subscribers until the following day, May 2, and that the 15-day cure period could not start until May 3.²⁸ First, this argument is built on the faulty premise that subscribers had not already entered their cure period as of May 1. There is no Commission rule or discussion to support this conclusion in this context. To the contrary, the *2019 Lifeline Reform Order* explained that "ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage."²⁹ The *Seventh COVID-19 Waiver Order* "require[s] ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days."³⁰ The "previous 30-days," as of May 1, included the days of April 1 through April 30, 2021. The 30th day of non-usage in that scenario is April 30. Thus, because the *2019 Lifeline Reform Order*, requires notice to be sent, at the latest, "on the 30th day of non-usage," in this scenario the notice should have been sent on April 30. Second, Petitioners' approach would impermissibly provide subscribers with 47 days to cure non-usage. As Petitioners note,³¹ Lifeline orders have clarified that subscribers have 45 days to demonstrate usage (30 during the non-usage period and 15 during the cure period).³² But Petitioners would provide subscribers an initial 31 days of non-usage (April 1 through May 1), another day on which the ETC would send notice (May 2), and then 15 days to respond and cure their non-usage (May 3 through May 17). Petitioners' approach impermissibly gives subscribers 47 days to demonstrate usage, rather than, as the rules require, only "a total of 45 days in which to demonstrate 'usage.'"³³

9. In addition, we reject Petitioners' application of the Commission's computation of time requirement that when interpreting a rule and "computing a period of time the last day of such period of time is included in the computation."³⁴ Petitioners interpret the language in the *Seventh COVID-19 Waiver Order* stating the Bureau would "require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days,"³⁵ to mean the waiver period must include

²⁷ Petitioners note that "[p]revious COVID-19 waiver orders had set the waivers to expire as of the end of a month (e.g., August 31, 2020; November 30, 2020)." Requests for Review, at 9-10 (citations omitted). This fact actually bolsters our reading that the non-usage period permitted under the *Seventh COVID 19 Waiver Order* was similarly set to expire at the end of the month on April 30, and impacted subscribers would enter their cure period on May 1, along with receiving their notices of potential de-enrollment. The order does not indicate an intention to break with past practice or otherwise indicate that the Bureau "took a different approach" with the *Seventh COVID-19 Waiver Order*. *Id.*

²⁸ See *id.* at 8, 10-12.

²⁹ See, e.g., *2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116 (emphasis added).

³⁰ *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10.

³¹ Requests for Review, at 10-11 & n.37.

³² See *2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116 ("ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage and de-enroll the subscriber if, during the subsequent 15 days, the subscriber has not used the service."); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4115, para. 415 (2016) (*2016 Lifeline Reform Order*) ("In this way, the subscriber will have a total of 45 days in which to demonstrate 'usage.'").

³³ *2016 Lifeline Reform Order*, 31 FCC Rcd at 4115, para. 415.

³⁴ Requests for Review, at 12 (quoting 47 CFR § 1.4(d)). See also 47 CFR § 1.4(c) ("Unless otherwise provided, the first day to be counted when a period of time begins with the occurrence of an act, event or default is the day after the day on which the act, event or default occurs.").

³⁵ *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10.

May 1 and cure notices need not be sent until May 2.³⁶ However, the order does not state that the waiver ends on May 1. It makes clear that the cure period begins on May 1.³⁷ The rule cited by petitioners is inapposite because the waiver is not stating when a period of time is ending, it is stating when a new one is beginning (that is, the cure period begins on May 1). Furthermore, as discussed, the *2019 Lifeline Reform Order* has provided specific guidance on the timing for interpreting the non-usage rule and when such non-usage notices are to be sent, which is on the 30th day of non-usage.³⁸

10. We also reject Petitioners' next contention that public policy supports their interpretation.³⁹ Petitioners are correct that during the initial portion of the pandemic there was a public interest in "subscribers receiv[ing] the full time provided to use their Lifeline service and the full cure period to avoid being unnecessarily de-enrolled" at the end of the waiver period.⁴⁰ However, that public interest does not warrant the relief requested by Petitioners. Petitioners are seeking to allow providers to claim Lifeline support for subscribers subject to the non-usage rule who failed to use their service for *more* than the full time provided by the Commission's rules and order, after the rule had already been waived for almost a full year.⁴¹ Public policy does not support wasteful spending of limited public funds on communications services that go unused and therefore do not benefit any subscriber. As explained in the *Seventh COVID-19 Waiver Order*, as the length of the waiver increased, so too did the likelihood that that universal service funding was being disbursed for connections that had not been used.⁴² In fact, various states raised concerns during the waiver period—which lasted approximately one year—that extending the waiver further would result in needless expenditures.⁴³ Thus, the Commission had a strong interest in protecting the success and integrity of the Lifeline program and ending disbursements for unused service as soon as it deemed the waiver was no longer necessary to support the unique connectivity needs that occurred during the initial portion of the COVID-19 pandemic, finding that "extension after an almost year-long waiver of the rule will only result in further disbursements being used to support a service that no one is using."⁴⁴ Additionally, the Bureau reminded ETCs to inform subscribers about the implications of non-usage long before the waiver at issue ended in order to decrease the likelihood of subscribers being unnecessarily de-enrolled.⁴⁵ This suggests that few, if any, subscribers would be de-enrolled due to confusion about whether a cure period ended on May 15 rather than May 17.

³⁶ Requests for Review, at 12.

³⁷ *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 ("[W]e extend the waiver and require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days.").

³⁸ See *2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116.

³⁹ See Requests for Review, at 8-9, 13-14.

⁴⁰ *Id.* at 13.

⁴¹ Not following the proper application of the non-usage requirements without good cause would also undermine the purpose of the rules. See, e.g., *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6769, para. 258 (2012) (*2012 Lifeline Reform Order*) ("Adopting usage requirements should reduce waste and inefficiencies in the Lifeline program by eliminating support for subscribers who are not using the service and reducing any incentives ETCs may have to continue to report line counts for subscribers that have discontinued their service.").

⁴² *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 9.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., *2012 Lifeline Reform Order*, 27 FCC Rcd at 6769, para. 257 ("Moreover, in order to make sure consumers are fully informed about the consequences of non-usage, we require pre-paid ETCs to notify their subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time."); *Second COVID-19 Waiver Order*, 35 FCC Rcd at 2952, para. 9 ("We will continue to monitor the situation to determine whether any additional waiver of these rules and deadlines is needed and we otherwise direct carriers to send non-usage

(continued....)

11. Petitioners' unsupported claim that "several major Lifeline providers" claimed and received April 2021 reimbursements based on the May 1, 2021 snapshot and had not had their reimbursements rescinded does not warrant a different result.⁴⁶ The Commission takes seriously its obligation to protect the success and integrity of the Lifeline program and the Bureau has overseen and will continue to oversee USAC in conducting audits and program integrity reviews to identify and recover any improper payments, including any that may have been paid for the period that is at issue in these petitions.⁴⁷

IV. ORDERING CLAUSES

12. 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 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.4, 54.405, and 54.407, that the Requests for Review filed by the Petitioners ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page) _____

notifications, as needed, to subscribers impacted by the waiver who have continued not to use their Lifeline service at the end of the waiver period."); *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 (noting the common practice "that many ETCs start the outreach required by this rule long before the expiration of the usage period").

⁴⁶ Requests for Review, at 2.

⁴⁷ See, e.g., *TracFone Wireless, Inc.*, DA 23-1078, 5, para. 9 (EB 2023) (post-NAL Consent Decree describing reimbursements to the Universal Service Fund for improperly claiming support for Lifeline customers who lacked qualifying usage).



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA No. 24-785

Report No. SAT-01845

Friday August 9, 2024

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-20230927-00236	E KA25	Inmarsat Inc.	
Modification			
Withdrawn			Effective Date: 08/07/2024

Nature of Service: Fixed Satellite Service, Mobile Satellite Service

SAT-STA-20231127-00291	E S2912	Planet Labs PBC	
Special Temporary Authority			
Grant of Authority			Effective Date: 08/09/2024

On August 9, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for an additional period of up to 60 days to operate its Pelican-1 satellite in the 2020-2025 MHz frequency band (Earth-to-space) using different duty cycles than specified in its license.

SAT-STA-20240726-00162	E S3092	Astranis Projects USA LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 08/07/2024

On August 7, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Astranis Projects USA LLC for special temporary authority for up to 30 days to continue to conduct telemetry, tracking and command (TT&C) functions in order to maintain the Arcturus space station at the 78° E.L. orbital location. TT&C is performed using the 19701-19703 MHz and 19704-19706 MHz (space-to-Earth), and 28351-28353 MHz and 28354-28356 MHz (Earth-to-space) frequency bands.

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
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DA 24-786
Released: August 9, 2024

**THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE ACTIVATION OF
THE MANDATORY DISASTER RESPONSE INITIATIVE (MDRI)
FOR COMMUNICATIONS IMPACTS FROM TROPICAL DEPRESSION DEBBY IN
VIRGINIA**

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission) hereby notifies the public of the activation of the Mandatory Disaster Response Initiative (MDRI) in the following locations as a result of request from State of Virginia following proclamation of a State of Emergency in Virginia due to Tropical Depression Debby:¹

COUNTIES OF INTEREST FOR THIS MDRI ACTIVATION INCLUDE THE FOLLOWING:

Virginia: Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Charlotte, Craig, Cumberland, Floyd, Fluvanna, Franklin, Greene, Halifax, Henry, Highland, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Page, Patrick, Pittsylvania, Prince Edward, Rappahannock, Roanoke, Rockbridge, Rockingham, and Shenandoah.

Upon the release of this Public Notice, all facilities-based mobile wireless providers operating in the above-referenced areas are hereby notified and required to: (1) provide for reasonable roaming under disaster arrangements when technically feasible;² (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies;³ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁴

Facilities-based mobile wireless providers that serve the above-referenced areas and that have provided contact information in DIRS prior to Tropical Depression Debby will be individually notified that the MDRI has been activated in their area.

PSHSB will announce when the MDRI has been deactivated by subsequent Public Notice. Providers should familiarize themselves with the Commission's MDRI requirements.⁵

¹ See Governor Glenn Youngkin Declares State of Emergency in Advance of Tropical Storm Debby (August 6, 2024), <https://www.governor.virginia.gov/newsroom/news-releases/2024/august/name-1031553-en.html>.

² See 47 CFR § 4.17(a)(3)(i) (detailing criteria for activating roaming under disaster arrangements).

³ See 47 CFR § 4.17(a)(3)(ii) (explaining what mutual aid arrangements must include).

⁴ 47 CFR § 4.17(a)(3)(i)-(v); see also FCC, *Wireless Network Resiliency During Disasters* (June 4, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

⁵ 47 CFR § 4.17.

Details on the Mandatory Disaster Response Initiative can be found on the FCC website at <https://www.fcc.gov/wireless-network-resiliency-during-disasters>. For further information concerning this MDRI activation, please contact the following PSHSB staff and the FCC 24/7 Operations Center:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccoperationcenter@fcc.gov

- FCC -

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

In re Application of	)	
	)	
Andres Serrano Ministries Inc.	)	FRN: 008625634
	)	Facility ID No. 106449
For Renewal of License for	)	Application File No. 0000138123
Station KGWP(FM)	)	
Pittsburg, Texas	)	

ORDER

Adopted: August 9, 2024**Released: August 9, 2024**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Andres Serrano Ministries Inc. (Licensee), the licensee for Station KGWP(FM), Pittsburg, Texas (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Renewal Application) for the Station.¹ In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Online Public Inspection File Rule contained in section 73.3527 of the Commission's rules (Rules).² The Bureau's Audio Division suspended processing of the Application because Licensee did not comply with its public file obligations in section 73.3527.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3527 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,³ and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,⁴ the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

¹ Application File No. 0000138123 (filed Mar. 8, 2021).

² 47 CFR § 73.3527.

³ 47 U.S.C. § 154(i)6 154(j), and 503(b).

⁴ 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Andres Serrano Ministries Inc., c/o Lorena Serano, 2926 FM 2254, Pittsburg, Texas 75686, and to its counsel, Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 21210 21st Road N, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of Online Public Inspection Files of	)	File No.: 0000138123
	)	
Andres Serrano Ministries Inc.	)	FRN: 008625634
	)	
Licensee of Station KGWP(FM)	)	
Pittsburg, Texas		

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Andres Serrano Ministries Inc. (hereafter “Licensee,” as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into the Licensee’s compliance with section 73.3527 of the Commission’s rules,¹ relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3527.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Media Bureau of the Commission.
 - (d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with section 73.3527 of the Rules.
 - (f) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
 - (g) “Effective Date” means the date by which both the Bureau and the Licensee have signed the Consent Decree.
 - (h) “Investigation” means the Bureau’s decision to hold and not process the Renewal Application due to the noncompliance with section 73.3527 of the Rules.
 - (i) “Licensee” means Andres Serrano Ministries Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (j) “Online Public Inspection File Rule” means 47 CFR § 73.3527.
 - (k) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
 - (l) “Renewal Application” means the pending application for renewal of license for Station KGWP(FM), Pittsburg, Texas (Application File No. 0000138123).

¹ 47 CFR § 73.3527.

- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Stations” means Station KGWP(FM), Pittsburg, Texas.
- (o) “Violations” means the Licensee’s noncompliance with the Online Public Inspection File Rule.

II. BACKGROUND

3. Section 73.3527 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission’s public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public’s ability to be informed about a station’s compliance with its obligations.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee filed the Renewal Application for renewal of the Station’s license. Based on the Licensee’s noncompliance with the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing the Renewal Application

5. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to maintain a Compliance Plan designed to ensure its future compliance with the Online Public Inspection File Rule noted above for one (1) year after the Effective Date.

III. TERMS OF AGREEMENT

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

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

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

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Licensee’s pending radio license renewal application identified in Appendix A in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee’s basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.²

² See 47 CFR § 1.93(b).

11. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it failed to timely place records in its online public inspection file, in repeated violation of section 73.3527 of the Rules.

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, “any history of prior offenses” by the licensee.³ The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee’s admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the online public inspection file and record keeping or otherwise.

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

14. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 15(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

- (a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:
 - i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;
 - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee’s compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee’s stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and
 - iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.
- (b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be

³ See 47 U.S.C. § 503(b)(2)(E).

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

- (c) **Compliance Report.** One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for the Station. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 16 below.
- i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.
 - ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,⁴ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
 - iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.
 - iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

15. **Reporting Noncompliance.** The Licensee shall, for each station it owns, report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

16. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 14(c), *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with

⁴ 47 CFR § 1.16.

its obligations, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

18. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act⁵ relating to the matters addressed in this Consent Decree.

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

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

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

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

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

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

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

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

⁵ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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



Albert Shuldiner
Chief, Audio Division

August 9, 2024
Date

Lorena Serrano
Andres Serrano Ministries Inc.

Date

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

Albert Shuldiner
Chief, Audio Division

Date



Lorena Serrano
Andres Serrano Ministries Inc.

AUGUST 7, 2024

Date

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

In the Matter of	)	Proceeding No. 24-180
	)	Bureau ID Number EB-24-MD-002
Ravieshwar Singh	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Hello Mobile Telecom, LLC,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

Adopted: August 12, 2024**Released: August 12, 2024**

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. Ravieshwar Singh (Singh) filed a formal complaint against Hello Mobile Telecom, LLC in the above-captioned proceeding on June 17, 2024.¹ On August 8, 2024, Singh sought dismissal of the Complaint with prejudice.² The parties previously indicated that they had reached an agreement “in principle,” but were working to “reduc[e]” the “agreement to writing.”³

2. We are satisfied that granting the Motion will serve the public interest by promoting the private resolution of disputes, eliminating the need for further litigation, and conserving the resources of the Parties and the Commission.

¹ Formal Complaint of Ravieshwar Singh v. Hello Mobile Telecom, Proceeding No. 24-180, Bureau ID No. EB-24-MD-002 (filed Jun. 17, 2024) (Complaint).

² Letter from Dennis P. Corbett, Counsel for Complainant, to Rosemary H. McEnery, Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, Proceeding No. 24-180, Bureau ID No. EB-24-MD-002 (filed Aug. 8, 2024) (Motion).

³ Email from Patrick O'Donnell, Counsel for Defendant, to Rosemary H. McEnery, Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, Proceeding No. 24-180, Bureau ID No. EB-24-MD-002 (Jul. 8, 2024).

II. ORDERING CLAUSE

3. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 4(i), 4(j), 201(b), 208, and 251(b)(2) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 208, and 251(b)(2), and sections 0.111, 0.311, and 1.720-1.740, of the Commission's rules, 47 CFR §§ 0.111, 0.311, and 1.720-1.740, that the Motion IS GRANTED and that this proceeding IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery
Chief, Market Disputes Resolution Division
Enforcement Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-789

Released: August 9, 2024

INFORMATION SOUGHT ON SHARING IN THE LOWER 37 GHZ BAND IN CONNECTION WITH THE NATIONAL SPECTRUM STRATEGY IMPLEMENTATION PLAN

WT Docket No. 24-243

Comment Date: September 9, 2024

With this *Public Notice*, the Wireless Telecommunications Bureau seeks to further develop the record for the 37.0-37.6 GHz band (Lower 37 GHz band) with the goal of informing the forthcoming report mandated by the National Spectrum Strategy (NSS) Implementation Plan. The NSS identified the Lower 37 GHz band for in-depth study to determine how a co-equal, shared-use framework which allows federal and non-federal operations should be implemented.¹ The final report with findings is to be completed by November 2024.²

Background. In 2016, the Federal Communications Commission (Commission), in coordination with the National Telecommunications and Information Administration (NTIA), made the Lower 37 GHz band available for coordinated, co-primary sharing between federal and non-federal fixed and mobile users and determined that federal and non-federal users would access the Lower 37 GHz band by registering individual sites through a coordination mechanism that would be developed through government/industry collaboration.³ In the accompanying *Further Notice of Proposed Rulemaking*, the Commission defined the parameters for a successful coordination mechanism and sought comment on the most appropriate coordination mechanism for the band.⁴ In 2018, the Commission noted that the Lower 37 GHz band would innovatively accommodate a variety of use cases and sought comment on utilizing a third-party coordinator or alternatively, implementing a coordination model similar to that used in Part 101 point-to-point bands.⁵

¹ National Telecommunications and Information Administration, National Spectrum Strategy at 3, 6-7 (2023), https://www.ntia.gov/sites/default/files/publications/national_spectrum_strategy_final.pdf (NSS). National Telecommunications and Information Administration, National Spectrum Strategy Implementation Plan at 6 (2024), <https://www.ntia.gov/sites/default/files/publications/national-spectrum-strategy-implementation-plan.pdf> (NSS Implementation Plan).

² NSS Implementation Plan at A-12.

³ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8057-8060, paras. 105, 111, and 113 (2016) (*2016 R&O* or *2016 FNPRM*, as appropriate).

⁴ *2016 FNPRM*, 31 FCC Rcd at 8171, paras. 449-450.

⁵ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 5576, 5602, paras. 63-64 (2018) (*2018 FNPRM*).

National Spectrum Strategy. The NSS identified the Lower 37 GHz Band as a band for further study “to implement a co-equal, shared-use framework allowing federal and non-federal users to deploy operations in the band.”⁶ The NSS Implementation Plan established a schedule under which a study of the band would be completed by October 2024 and a final report issued by November 2024.⁷ In order to aid in the study of the band and the preparation of the report, we seek public input on various issues relating to the Lower 37 GHz Band.⁸ The record developed in response to this *Public Notice* will be publicly available in WT Docket No. 24-243 and shared with the NTIA, the Department of Defense (DoD), and other interested agencies.

Potential Uses of the Lower 37 GHz Band. We find that additional information on potential uses of the Lower 37 GHz band would be helpful in the preparation of the Lower 37 GHz Report. The current record on potential uses of the band is limited. While commenters foresee uses including fixed wireless broadband, point-to-point links, Internet of Things networks, device-to-device operations, augmented reality applications, smart cities, smart grids, and as part of private networks,⁹ they have not provided much detail about implementation of these services in the band. We therefore ask interested operators to provide specific and updated information on the contemplated uses of the band, to include interdependencies of pairing spectrum bands with the Lower 37 GHz band. We also seek input regarding the feasibility of Aeronautical Mobile Service (AMS) operations within the band.¹⁰ This information will be helpful as we develop sharing mechanisms for the band. We anticipate that operations offered in the band initially will be point-to-point and point-to-multipoint operations, although other types of operations—including mobile operations—may develop later. We encourage commenters to explain how the various ideas presented below would facilitate or hinder contemplated operations.

Coordination Framework. Under our contemplated framework, proposed operations must be successfully coordinated with the relevant federal and non-federal operators before they can be registered. A coordination portal, where Federal and non-Federal operators could generate phase one coordination contour(s), which identifies if further phase two coordination would be required, has been proposed. We seek input on the portal’s capabilities in all phases and how the coordination portal could be funded. As referenced in the NSS,¹¹ in 2020 the Commission began intra-governmental collaboration with NTIA and DoD to further define and develop a possible coordination mechanism that permits the innovative type of spectrum sharing envisioned for the band. These conversations focused on balancing the desire to make this spectrum available expeditiously for deployment with the need to protect both federal and non-federal operations in the band from harmful interference. In addition, we intend that the framework be sufficiently flexible to accommodate multiple uses while also being simple enough to deploy more quickly than other more elaborate sharing mechanisms.

As an outgrowth of prior discussions with representatives from the Commission, NTIA, and DoD, a two-phase process emerged as a possible coordination mechanism to ensure meaningful access to spectrum by later entrants, including federal entrants, while ensuring adequate protection from harmful

⁶ NSS at 7.

⁷ NSS Implementation Plan at A-12.

⁸ We note that another proceeding generated relevant comments regarding potential uses of the Lower 37 GHz band. *See Shared Use of the 42-42.5 GHz Band*, WT Docket No. 23-158, Notice of Proposed Rulemaking, 38 FCC Rcd 6362 (2023).

⁹ *See, e.g.*, Comments of Starry, Inc., GN Docket No. 14-177 (filed Sep. 10, 2018); Comments of Qualcomm, Inc., WT Docket No. 23-158 and GN Docket No. 14-177 (filed Aug. 30, 2023) at 4; Comments of NCTA – The Internet & Television Association, WT Docket No. 23-158 and GN Docket No. 14-177 (filed Aug. 30, 2023) at 3-4.

¹⁰ A new allocation would be required to allow Aeronautical Mobile Service to operate in the Lower 37 GHz band.

¹¹ NSS at 7.

interference to incumbents.¹² In the first phase, an interference contour would be drawn around each existing and potential site based on its technical parameters, including transmitter details such as location (latitude and longitude), equivalent isotropic radiated power, antenna height, and antenna azimuth angle. The contour calculation would also take into account propagation loss due to terrain. If the prospective site's contour does not overlap with that of any existing registration, coordination is successful, and registration of the new site may proceed. If there is overlap, there would be a second phase of coordination, in which operators would communicate directly to discuss whether and under what circumstances a placement inside the relevant contours might be feasible. This phase would allow for more advanced interference mitigation techniques, such as antenna directivity, polarization, or shielding to provide solutions in specific situations without requiring a one-size-fits-all approach. The operators would be required to provide technical information on their respective operations¹³ and cooperate in good faith to determine whether coexistence would be possible. A dispute resolution process would be established to resolve any disputes that arose during the coordination process. We seek input on what information should be included within a dispute resolution process. If the second phase of coordination is successfully achieved, the applicant would be permitted to register that particular site.

For non-federal site registrations, the technical details of the proposed site would be part of the registration and publicly available in the Universal Licensing System (ULS). For federal site registrations, NTIA would maintain the relevant technical details. For non-federal coordination with federal incumbents, these federal site registration details would be queried during the first phase of coordination. That query would return either a green light (no contour overlap), or a yellow light (overlapping contours and potential interference risk); for a yellow light result, contact information for the relevant federal agency would be provided to allow a non-federal applicant to proceed to phase two, as described above. We seek input on this coordination framework.

Adjacent Band Protection. In the 2016 R&O, the Commission adopted an out-of-band emission limit that it concluded would “keep emissions from an UMFUS device into the 36-37 GHz band well below the -10 dBW level specified by footnote US550A,” noting that the -10 dBW power limit “was adopted to protect passive sensors in the 36-37 GHz band in accordance with ITU Resolution 752 (WRC-07).”¹⁴ Under FCC Part 30.203, operations are limited to -13 dBm/MHz, which expands to -13 dBW/GHz. Subsequently, Resolution 243 (WRC-19), Table 1, established a -23 dBW/GHz unwanted emission mean power for IMT stations within the frequency band 36-37 GHz.¹⁵ In light of these developments, we seek input on whether additional measures are needed to protect spaceborne remote passive sensors in the 36-37 GHz band.

Licensing. For non-federal operations, the licensing process would consist of two steps. A non-federal entity seeking to operate in the Lower 37 GHz band would first obtain a nationwide non-exclusive license from the Commission, and then, following successful coordination, would register specific site locations in ULS. All registered site locations would be protected from harmful interference from any subsequent registrations, on a first-come first-served basis.¹⁶ Registered non-federal sites would then generally be required to finish construction and begin operation within 120 days of the date the

¹² See Appendix A: Draft Lower 37 GHz Phase 1 Coordination Zone Contour Methodology and Appendix B: Draft Lower 37 GHz Phase 2 Coordination Methodology, attached. We also seek input on the methodologies contained in these appendices, including the parameters proposed.

¹³ DoD contemplates that in some instances there may be complications with data exchange due to data security concerns.

¹⁴ 2016 R&O, 31 FCC Rcd at 8073, para. 156.

¹⁵ Terrestrial component of International Mobile Telecommunications in the frequency bands 37-43.5 GHz and 47.2-48.2 GHz, Resolution 243, WRC-19.

¹⁶ First-in-time priority would apply to both federal and non-federal operations.

registration is accepted, or the registration would be cancelled, and the licensee would forfeit their interference protection priority. As discussed above, we anticipate that most sites initially would be either point-to-point links or point-to-multipoint deployments, but this licensing process would potentially be able to accommodate other uses as well. We seek input on this licensing process.

Priority Access. Consistent with the questions asked in the 2018 FNPRM,¹⁷ we envision that the lower 200 megahertz band segment, 37.0-37.2 GHz, would be subject to priority use by DoD and military agency departments. The goal of this priority access would be to ensure that spectrum is available for military deployments, which may be on a longer timescale than commercial deployments. Military interests include pursuing air-to-ground use as part of a future sharing framework for the Lower 37 GHz band. This interest, in part, reflects the physics of the band inasmuch as in the upper atmosphere, the propagation is dominated by line-of-sight paths with reduced obstruction and atmospheric absorption. Given technology advancements since the adoption of the 2016 R&O, we seek input on this matter. We also invite suggestions on the conditions under which non-federal users could operate in this portion of the band while maintaining the requisite flexibility for military deployments. For example, allowing non-federal users to register and deploy sites immediately, subject to a condition that they must modify or potentially cease operations in the future if those operations conflict with later military deployments could allow this spectrum to more quickly be put into use. Further, we could impose conditions that specify that non-federal operators would not be protected from harmful interference from subsequent military deployments. We seek input on implementing priority access.

We seek input on these and any other suggestions for the use of this band, as we continue to explore options for making this spectrum available for shared use.

Ensuring Widespread Access to Lower 37 GHz Spectrum. Given the limited number of channels available in the Lower 37 GHz band, the variety of potential uses of the band, and the fact that both federal and non-federal entities will have access to the band, we anticipate that initial demand for the band may exceed the available supply of channels in some areas. We recognize there is a risk, particularly in larger markets, that future entrants (both federal and non-federal) may be precluded from accessing the band if the band is fully licensed in the initial licensing phase. On the other hand, we want operators to put this available spectrum to use quickly—both for non-federal and federal uses—in order to serve the public interest.

We seek input on what measures could be taken to control access to the Lower 37 GHz band during the initial site registration phase. For example, during this phase, applicants could be limited to a single 100 megahertz channel per site, which would ensure that multiple operators could access the band. Another possible approach would be to establish accelerated buildout deadlines (e.g., 60 or 90 days) for registrations issued during the initial phase. That would provide some assurance that only *bona fide* operators who are ready to construct and commence operations file site registrations. Finally, to avoid cases where multiple applicants seek to register the same channel, the Commission could reserve the right to grant an applicant a different 100 megahertz channel than the channel it originally sought.

Finally, we seek input on whether there are alternative measures that should be considered to enable multiple providers to operate in the Lower 37 GHz band.

Filing Requirements. Interested parties may file 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) using WT Docket No. 24-243.

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

¹⁷ 2018 FNPRM, 33 FCC Rcd at 5604, para. 68.

- 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 courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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).

Additional Information. For further information, contact Catherine Schroeder, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-1956 or Catherine.Schroeder@fcc.gov.

-- FCC --

APPENDIX A
DRAFT LOWER 37 GHZ PHASE 1 COORDINATION ZONE CONTOUR
METHODOLOGY

Overview

Application process initiated and validated at NTIA for federal users and FCC for non-federal users

Under Phase 1 Coordination:

- Establish coordination zone contour based on station type
- The same technical assumptions will apply to federal and non-federal users
- Identify overlap between coordination zone contours of existing and proposed systems
- If no overlap in coordination zone contours proposed station approved for licensing (non-federal stations) or frequency authorization (federal stations), otherwise proceed to Phase 2 (e.g., compatibility analysis performed by operators)
- Note: Provide an interference resolution process for non-overlapping contours

1. POINT-TO-MULTIPOINT STATION COORDINATION ZONE CONTOURS**Transmitter Parameters (Provided by Federal and Non-Federal Applicant)**

- Equivalent Isotropic Radiated Power (EIRP) (dBm/100 MHz)
- Latitude and Longitude (decimal degrees)
- Antenna Height (meters)

Reference Receiver

- Antenna Height: 10 meters

Coordination Trigger

- Power Spectral Density Threshold (PSDT): -110 dBm/100 MHz

Required Propagation Loss Calculation

- $L_{\text{Required}} = \text{EIRP} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Coordination Zone Contours

- Use each distance for each radial to establish coordination zone contour (see Figure 1 for example)

2. BASE-TO-MOBILE STATION COORDINATION ZONE CONTOURS**Transmitter Parameters (Provided by Federal and Non-Federal Applicant)**

- Equivalent Isotropic Radiated Power (EIRP) (dBm/100 MHz)
- Latitude and Longitude (decimal degrees)
- Antenna Height (meters)

Reference Receiver

- Antenna Height: 1.5 meters

Coordination Trigger

- Power Spectral Density Threshold (PSDT): -110 dBm/100 MHz

Required Propagation Loss Calculation

- $L_{\text{Required}} = \text{EIRP} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Coordination Zone Contours

- Use each distance for each radial to establish coordination zone contour (see Figure 1 for example)

3. COORDINATION ZONE CONTOURS FOR POINT-TO-POINT STATIONS**Parameters (Provided by Federal and Non-Federal Applicant)**

- Equivalent Isotropic Radiated Power (EIRP) (dBm/100 MHz)
- Latitude and Longitude (decimal degrees)
- Transmitter and Receiver Antenna Height (meters)
- Antenna Azimuth Angle (degrees)

Reference Receiver

- Antenna Height: Provided by Applicant

Coordination Trigger

- Power Spectral Density Threshold (PSDT): -110 dBm/100 MHz

Required Propagation Loss Calculation**Key Hole Coordination Zone Contour Distance (Within $\pm 5^\circ$ of Mainbeam)**

- Keyhole Angle: Fixed ± 5 degrees with respect to azimuth angle
- $L_{\text{Required}} = \text{EIRP} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance ($\pm 5^\circ$ to $\pm 15^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - \text{Antenna Discrimination Factor (ADF)} - \text{PSDT}$, where the ADF is 0 dB at 5 degrees off the axis of the main beam of the antenna and increases linearly at 3dB for each additional degree off axis up to 30 dB at 15 degrees off the axis of the main beam of the antenna.
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance ($\pm 15^\circ$ to $\pm 45^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - 30 \text{ dB} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance ($\pm 45^\circ$ to $\pm 55^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - \text{ADF} - \text{PSDT}$, where the ADF is 30 dB at 45 degrees off the axis of the main beam of the antenna and increases linearly at 1dB for each additional degree off axis up to 40dB at 55 degrees off the axis of the main beam of the antenna.
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance ($\pm 55^\circ$ to $\pm 80^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - 40 \text{ dB} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance ($\pm 80^\circ$ to $\pm 100^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - \text{ADF} - \text{PSDT}$, where the ADF is 40 dB at 80 degrees off the axis of the main beam of the antenna and increases linearly at 0.5 dB for each additional degree off axis up to 50 dB at 100 degrees off the axis of the main beam of the antenna.
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Circular Coordination Zone Contour Distance (outside of $\pm 100^\circ$ of Mainbeam)

- $L_{\text{Required}} = \text{EIRP} - 50 \text{ dB} - \text{PSDT}$
- Irregular Terrain Model (ITM) and ITU-R Recommendation P.676 atmospheric attenuation used to determine distance corresponding to L_{Required}
- ITM parameters provided in Table 1
- ITU-R P.676 parameters provided in Table 2
- No clutter loss

Coordination Zone Contours

- Use each distance for each radial to establish coordination zone contour starting from system location

TABLE 1. ITM PARAMETERS USED IN COORDINATION ZONE CONTOUR GENERATION¹⁸

Parameter	Value
Frequency	37 GHz
Mode	Terrain Dependent
Transmitter Antenna Height (Above Ground Level)	Provided by Applicant
Reference Receiver Antenna Height (Above Ground Level)	Point-to-Multipoint: 10 meters Base-to-Mobile: 1.5 meters Point-to-Point: Provided by Applicant
Transmitter Location	Latitude (Decimal Degrees) and Longitude (Decimal Degrees)
Mode of Variability	Single Message
Surface Refractivity	301 N-Units
Dielectric Constant of Ground	15
Radio Climate	Continental Temperate
Reliability	50%
Confidence	50%
Terrain Data	United States Geological Survey 1-Second
Atmospheric Attenuation	Recommendation ITU-R P.676 ¹⁹
Number of Radials	360 (1 Degree Increments)
Spacing Along Radial	30 meters
Distance Criteria	1st point along radial where the required path loss is achieved

TABLE 2. ITU-R P.676 PARAMETER INPUTS

Parameter	Value
Frequency	37 GHz
Air Temperature	23 C
Surface Atmospheric Pressure	1013.25 hPa
Ground-level Water Vapor Density	7.5 g/m3

¹⁸ National Telecommunications and Information Administration, NTIA Report 82-100, *A Guide to the Use of the ITS Irregular Terrain Model in the Area Prediction Mode* (April 1982).

¹⁹ Recommendation ITU-R P.676-12, *Attenuation by atmospheric gases and related effects* (Aug. 2019). The model in ITM is limited to an upper frequency limit of 20 GHz. ITM does not explicitly compute gaseous attenuation (the remaining propagation loss models in ITM are not affected by going to higher frequencies). By augmenting (i.e., adding) the basic transmission losses predicted by ITM with the product of the P.676 specific attenuations (dB/km) and the path distance (in consistent units), the basic transmission loss will include gaseous attenuation that is required.

STATION DEFINITIONS²⁰

Point-to-Multipoint Hub Station. A fixed point-to-multipoint radio station that provides one-way or two-way communication with fixed Point-to-Multipoint Service User Stations.

Point-to-Multipoint Service. A fixed point-to-multipoint radio service consisting of point-to-multipoint hub stations that communicate with fixed point-to-multipoint user stations.

Point-to-Multipoint User Station. A fixed radio station located at users' premises, lying within the coverage area of a Point-to-Multipoint Hub station, using a directional antenna to receive one-way communications from or providing two-way communications with a fixed Point-to-Multipoint Hub Station.

Point-to-point station. A station that transmits a highly directional signal from a fixed transmitter location to a fixed receive location.

Transportable station. Transmitting equipment that communicates with a base station and is not intended to be used while in motion, but rather at stationary locations.

Base station. A fixed station that communicates with mobile or transportable stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.²¹

²⁰ These station definitions are taken from, or based on, the definitions set forth in 47 CFR 30.2.

²¹ This station definition is taken from the FCC rules. *See* 47 CFR 2.1.

APPENDIX B**DRAFT LOWER 37 GHZ PHASE 2 COORDINATION METHODOLOGY****Overview**

The phase two coordination methodology provides guidance to the operators (federal and non-federal) performing compatibility analysis when there is an overlap in the coordination contours generated in Phase 1.

When phase one contours overlap and trigger phase two coordination, the applicant will contact the incumbent, who should provide a response within 15 working days.

Under Phase 2 Coordination:

- Parties should exchange technical characteristics to perform compatibility analysis.
- Operators should negotiate in good faith and work cooperatively.
- The same Phase 1 technical assumptions will apply to federal and non-federal users. Additional Phase 2 coordination may apply agreed upon models.
- Applicable propagation terrain and building databases should be used when available.
- Operators should take full advantage of interference mitigation techniques such as antenna directivity, polarization, frequency selection, shielding, site selection, and transmitter power control to facilitate the implementation, operation, compatibility between systems.
- A dispute resolution process will be established by FCC and NTIA to resolve disagreements between operators that arise during the coordination process.

Technical Parameters for Phase 2 Coordination

Table 1 provides the technical parameters to be exchanged between operators for the Lower 37 GHz Phase 2 Coordination. If operators agree, a subset or additional technical parameters can be exchanged for the compatibility analysis.

Table 1. Phase 2 Coordination Technical Parameters

Technical Parameter	Units	Comments
Transmitter Geographic Coordinates	Degrees/Minutes/Seconds	
Transmitter Antenna Ground Elevation	Meters	Above Mean Sea Level (as indicated by the USGS terrain database)
Transmitter Antenna Height	Meters	Above Ground Level
Transmitter Power	dBm	
Mainbeam Antenna Gain	dBi	
Equivalent Isotropic Radiated Power	dBm	
Center Frequency	MHz	
Emission Bandwidth ²²	MHz	
Emission Designator	Emission Classification Symbols	
Emission Spectrum	Relative Attenuation (dB) as a Function of Frequency Offset from Center Frequency (MHz)	-3 dB, -20 dB, -60 dB points
Transmitter Antenna Azimuth of Maximum Gain	degrees	With Respect to True North
Transmitter Antenna Downtilt/Uptilt (Elevation) Angle	degrees	With Respect to Horizontal
Transmit Antenna Polarization		
Transmitter Azimuth Off-Axis Antenna Pattern	dBi as a function of off-axis angle in degrees	Required for all use cases; point-to-point systems should use NSMA ²³ Format
Transmitter Elevation Off-Axis Antenna Pattern	dBi as a function of off-axis angle in degrees	Required for all use cases; point-to-point systems should use NSMA Format
Transmitter Cable/Insertion Loss	dB	
Receiver Geographic Coordinates (Point to Point Systems Only)	Degrees/Minutes/Seconds	
Receiver Antenna Ground Elevation (Point to Point Systems Only)	Meters	Above Mean Sea Level (as indicated by the USGS terrain database)
Receiver Antenna Height (Point to Point Systems Only)	Meters	Above Ground Level
Receiver Mainbeam Antenna Gain	dBi	
Receiver Threshold/Sensitivity	dBm	Minimum Discernible Single/Criteria
Receiver Noise Figure	dB	

²² Emission Bandwidth is synonymous with the definition of occupied bandwidth in the ITU radio regulations and FCC rules - *Occupied bandwidth*. The frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5 percent of the total mean power radiated by a given emission.

²³ National Spectrum Management Association.

Technical Parameter	Units	Comments
Receiver IF Selectivity	Relative Attenuation (dB) as a Function of Frequency Offset from Center Frequency (MHz)	-3 dB, -20 dB, -60 dB points
Receiver Antenna Azimuth of Maximum Gain	degrees	With Respect to True North
Receiver Antenna Downtilt/Uptilt (Elevation) Angle	degrees	With Respect to Horizontal
Receive Antenna Polarization		
Receiver Azimuth Off-Axis Antenna Pattern	dBi as a function of off-axis angle in degrees	Required for all use cases; point-to-point systems should use NSMA Format
Receiver Elevation Off-Axis Antenna Pattern	dBi as a function of off-axis angle in degrees	Required for all use cases; point-to-point systems should use NSMA Format
Receiver Cable/Insertion Loss	dB	

Interference Criteria for Phase 2 Coordination

The interference criteria for the Phase 2 coordination are set forth in Table 2. If coordinating parties are able to agree on mutually acceptable alternative interference criteria, such alternative criteria may be used in the compatibility analysis.

Table 2. Phase 2 Coordination Interference Criteria Use Case Matrix

Applicant Use Case	Incumbent Use Case	Interference Criteria
B-M	B-M	Receiver Noise – 6 dB
B-M	P-MP	Receiver Noise – 6 dB
B-M	P-P	Receiver Noise – 6 dB
P-MP	P-MP	Receiver Noise – 6 dB
P-MP	B-M	Receiver Noise – 6 dB
P-MP	P-P	Receiver Noise – 6 dB
P-P	P-P	Receiver Noise – 6 dB
P-P	B-M	Receiver Noise – 6 dB
P-P	P-MP	Receiver Noise – 6 dB
Receiver Noise = $-114 + 10 \log \text{IFBW} + \text{NF}$ (Noise temperature is assumed to be 290 degrees Kelvin (room temperature) for all systems using this band) IFBW is the receiver 3 dB intermediate frequency bandwidth, in MHz, if available. If not available, emission bandwidth may be used. NF is the receiver noise figure, in dB I/N of - 6dB, used to determine the interference criteria unless another interference criteria is identified and agreed to by federal and non-federal operators		

Compatibility Analysis

The following general equation will be used to calculate the received interference power at the input of a receiver:²⁴

$$PR = PT + GT + GR - LP - LT - LR - LC - LA - LPol - FDR \quad (1)$$

where:

PT is the transmitter power (dBm);
EIRP is the equivalent isotropically radiated power of the transmitter (dBm); GT is the transmitter antenna gain in the direction of the receiver (dBi);
GR is the receiver antenna gain in the direction of the receiver (dBi); LP is the basic transmission loss, in the absence of clutter (dB);
LT is the transmitter cable/insertion losses (dB); LR is the receiver cable/insertion losses (dB); LC is the clutter loss (dB);
LA is the atmospheric loss (dB);
LPol is the polarization loss (dB); and
FDR is the Frequency Dependent Rejection (dB)

The compatibility analysis only considers single-entry interference. If operators mutually agree to do so, they may consider aggregate interference.

The computed receiver interference power will be compared to interference criteria to determine whether there is compatibility. The operators may exchange the interference threshold exceedance once the analysis is complete.

The amount in dB that the calculated interference from Equation 1 exceeds the interference criteria specified in Table 2 will be exchanged between the federal and non-federal users.

Antenna Models

Measured antenna patterns are preferred and should be used whenever available; in their absence, the operators may use modeled antenna patterns provided by the manufacturer, or a model that estimates the antenna pattern.²⁵

Propagation Model

To calculate the propagation loss, operators may mutually agree to apply proprietary propagation models, actual measurement data, or other environmental data, consistent with good engineering practices. Both operators must agree on and accept the results of the analysis performed using the

²⁴ The link budget analysis approach used is described in Joint Spectrum Center, JSC-CR-10-004, *Communications Receiver Performance Degradation Handbook* (Aug. 11, 2010), Section 2, available at <https://www.ntia.doc.gov/files/ntia/publications/jsc-cr-10-004final.pdf>.

²⁵ For an active Advanced Antenna System (AAS) in the lower 37 GHz band ITU-R M.2101 contains a possible antenna model for a single element and composite pattern. For non-AAS, ITU-R F.1336 may be considered.

agreed-upon methodology. The Phase 2 coordination analysis should not consider worst-case conditions unless otherwise justified.

Coordinating parties may consider the use of open-source propagation models such as ITM and ITU-R P.676.²⁶ Annex 1 of this document contains the suggested propagation model inputs and application descriptions.

Clutter Loss Model

The operators may mutually agree to use proprietary clutter loss and building height databases. Operators may also consider using ITU-R P.2108, an open-source statistical clutter loss model.

Variation Acceptance in Analysis Results

Using the methodology in this document, it is possible for both operators to produce different analysis results if they choose to implement each model individually. Therefore, the operators are encouraged to exchange analysis results to resolve differences. The FCC and NTIA will establish a dispute resolution process through which operators can discuss their analyses and adjudicate disputes through NTIA and the FCC.

²⁶ ITU-R P.452 is another open-source propagation model that can be implemented if both parties agree to it.

ANNEX 1

This section provides a brief description of public models that can be used to calculate propagation loss, LP in equation 1. The models herein assume all operations are outdoor and all transmitters and receivers have fixed antenna heights.

ITM + ITU R P. 676*Application*

This model might be used to calculate the propagation loss for paths in suburban and rural environments. ITM requires an array of terrain elevations as an input. A terrain database and terrain elevation extraction methods will be required to obtain the terrain elevations. ITM only considers bare-earth obstruction without any building, vegetation or other material clutter losses.

Source Code

[NTIA/itm: The Irregular Terrain Model \(ITM\) \(github.com\)](https://github.com/NTIA/itm)

Table 1. ITM Input Parameters

Parameter	Value
Frequency	Operating Frequency (GHz)
Mode	Terrain Dependent
Transmitter Antenna Height (Above Ground Level)	Provided by Applicant
Reference Receiver Antenna Height (Above Ground Level)	Point-to-Multipoint: 10 meters Base-to-Mobile: 1.5 meters Point-to-Point: Provided by Applicant
Transmitter Location	Latitude(Decimal Degrees) and Longitude(Decimal Degrees)
Mode of Variability	Single Message
Surface Refractivity	301 N-Units
Dielectric Constant of Ground	15
Radio Climate	Continental Temperate
Reliability	50%
Confidence	50%

Table 3. ITU-R P.676 Input Parameters

Parameter	Value
Frequency	37 GHz
Air Temperature	23 C
Surface Atmospheric Pressure	1013.25 hPa
Ground-level Water Vapor Density	7.5 g/m3



PUBLIC NOTICE

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DA 24-791

August 9, 2024

**EFFECTIVE DATE FOR CYBERSECURITY LABELING FOR INTERNET OF THINGS
RULES SET FOR SEPTEMBER 9, 2024**

PS Docket No. 23-239

On March 15, 2024, the Commission released the *Cybersecurity Labeling for Internet of Things Report and Order* (Order),¹ establishing the framework for the Commission's consumer IoT labeling program. Certain of the rules adopted in the Order resulted in a new information collection under the Paperwork Reduction Act of 1995.² The Office of Management and Budget (OMB) has completed any necessary review under the Paperwork Reduction Act and approved the information collection associated with these rules on July 30, 2024 (OMB Control Number 3060-1328). On August 9, 2024, the Commission announced in the Federal Register both this approval and that the new rules would become effective September 9, 2024.³

By this Public Notice, the Federal Communications Commission's Public Safety and Homeland Security Bureau announces a September 9, 2024 effective date for the amendments to Part 8 of the Commission's rules addressing 47 CFR §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, 8.222.

For further information regarding this proceeding, please contact Tara B. Shostek, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at (202) 418-8130 or Tara.Shostek@fcc.gov.

¹ *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-26, (March 15, 2024).

² Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520). The Commission may not conduct or sponsor a collection of information without prior approval from the Office of Management and Budget. 5 CFR § 1320.5.

³ Federal Communications Commission, *Cybersecurity Labeling for Internet of Things*, 89 Fed. Reg. 65224 (August 9, 2024).

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

In the Matter of	)	
	)	
Rules Governing the Use of Distributed	)	MB Docket No. 20-74
Transmission System Technologies	)	
	)	
Authorizing Permissive Use of the “Next	)	GN Docket No. 16-142
Generation” Broadcast Television Standard	)	

ORDER

Adopted: August 9, 2024**Released: August 9, 2024**

By the Chief, Media Bureau:

1. In this Order, we grant the request filed by Microsoft Corporation (Microsoft) to withdraw its petition for reconsideration (Petition) of the Commission’s *DTS Report in Order* adopted in the above captioned proceedings.¹ The *DTS Report and Order* modified the Commission’s technical rules in order to promote expanded use of distributed transmission systems (DTS) by broadcast television stations. On May 21, 2021, Microsoft sought reconsideration of the *DTS Report and Order*.² On August 5, 2024, Microsoft filed a request for withdrawal of the Petition stating that it is “no longer pursuing or advocating for the matters raised in the Petition” and that the Petition may be dismissed.³

2. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and sections 0.61, 0.204(b), 0.283, 1.8, and 1.429 of the Commission’s Rules, 47 CFR §§ 0.61, 0.204(b), 0.283, 1.8, and 1.429, the request for withdrawal filed by Microsoft Corporation **IS GRANTED**, and the petition for reconsideration filed by Microsoft Corporation **IS DISMISSED** without prejudice.

3. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20-74 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

¹ *Rules Governing the Use of Distributed Transmission System Technologies, Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, MB Docket No. 20-74, GN Docket No. 16-142, Report and Order, 36 FCC Rcd 1227 (2021) (*DTS Report and Order*).

² Petition for Reconsideration of Microsoft Corporation, MB Docket No. 20-74 and GN Docket No. 16-142 (filed May 21, 2021).

³ Request for Withdrawal and Request for Dismissal of Microsoft Corporation Petition for Reconsideration, MB Docket No. 20-74 and GN Docket No. 16-142 (filed Aug. 5, 2024).



Federal Communications Commission
Washington, D.C. 20554

August 12, 2024

DA 24-794
In Reply Refer to:
1800B3-CEG
Released: August 12, 2024

Big Rapids Wireless Inc.
c/o Michael Erickson
PO Box 1494
Big Rapids, MI 49307

Smile FM
PO Box 88
Attica, MI 48412

Mentor Partners, Inc.
c/o Mark B. Denbo, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Ave NW Suite 301
Washington, DC 20016

In re: Big Rapids Wireless Inc.
New LPFM, Big Rapids, Michigan
Facility ID No. 788559
Application File No. 232761

Petition to Deny
Informal Objection

Dear Applicant, Petitioner, and Objector:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station on Channel 201 at Big Rapids, Michigan (Station), filed by Big Rapids Wireless Inc. (Big Rapids) on December 13, 2023. We also have a petition to deny the Application filed by Smile FM (Smile) on February 5, 2024 (Petition),¹ and an informal objection to the Application filed by Mentor Partners, Inc. (Mentor) on February 27, 2024 (Objection).² For the reasons set forth below, we deny the Petition and Objection and grant the Application.

Background. Big Rapids filed the Application on December 13, 2023, during the 2023 LPFM filing window.³ In the Application, Big Rapids certifies that it is a nonprofit educational organization and

¹ Pleading File No. 238305. On February 13, 2024, Big Rapids filed an opposition to the Petition to Deny (Petition Opposition) (Pleading File No. 238862). On February 20, 2024, Smile filed a reply to the Petition Opposition (Petition Reply) (Pleading File No. 239554). On March 11, 2024, Big Rapids filed a supplement to the Petition Reply (Supplement) (Pleading File No. 240691).

² Pleading File No. 239850. On March 23, 2024, Big Rapids filed an opposition to the Objection (Objection Opposition) (Pleading File No. 241838).

³ See generally, *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023.

that it meets two of the community-based criteria to qualify as “local” and therefore is eligible for an LPFM authorization: namely, that its physical headquarters lie within 20 miles of the proposed transmitting antenna site and that 75% of its board members reside within 20 miles of the proposed transmitting antenna site.⁴ On February 13, 2024, Big Rapids amended the Application to attach its articles of incorporation, showing that it was incorporated in the state of Michigan at the time the Application was filed.⁵

Smile Petition. In the Petition, Smile argues that the Application violates section 73.827 of the Commission’s rules because it fails to demonstrate that the proposed LPFM station would protect Smile’s pending application (Smile Application)⁶ for a new noncommercial educational (NCE) FM translator station at Green Township, Michigan (Smile Translator).⁷ In the Petition Opposition, Big Rapids responds that section 73.827 only applies to instances of actual interference to a translator’s reception of its input signal or to predicted interference to a licensed translator station from a third-adjacent channel proposed LPFM application.⁸ Because the Smile Application has not been accepted for filing or granted, the Smile Translator has not yet been built, and is not on a third-adjacent channel to the Station, Big Rapids concludes, section 73.827 is inapplicable here.

In its Reply, Smile states that the Station is likely to interfere with the Smile Translator in the future, and if the Station is required to cease operations as a result it would “disenfranchise its listeners and cause public outrage.”⁹ Smile also requests “immediate processing” of the Smile Application, which has been pending since the Commission transitioned from a cut-off system to a filing window system for new NCE FM translators in 2000.¹⁰ At that time, the Commission suspended action on all then-pending non-cut-off new NCE translator applications in the reserved band in anticipation that they would be included in the next new NCE translator filing window.¹¹ When, in 2010, it became evident that such a window was unlikely to take place in the near future, the Bureau dismissed all of the pending non-cut-off new NCE translator applications, including the Smile Application.¹² Smile successfully petitioned for reconsideration of its dismissal, and the Smile Application was reinstated December 14, 2010.¹³ As there

Media Bureau Announces Extension of LPFM New Station Application Filing Window, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

⁴ Application, Legal Certifications Section, Eligibility Certifications questions and Community-Based Criteria questions.

⁵ See *Procedures Public Notice* at 6 (“Applicants also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation”).

⁶ Application File No. BNPFT-20000327AAJ.

⁷ Petition at 1-2 (citing 47 CFR § 73.827). Smile receives a signal on Channel 202 and rebroadcasts it on Channel 218. It is the input channel that is relevant for present section 73.827 purposes.

⁸ Petition Opposition at 1-2.

⁹ Reply at 2.

¹⁰ Petition Reply at 2. The Smile Application was originally filed on March 27, 2000.

¹¹ *NCE Order*, 15 FCC Rcd at 7437, para. 121

¹² *Reserved Band FM Translator Applications Dismissed*, Public Notice, 25 FCC Rcd 3276, 3276-77 (MB 2010) (dismissing all then-pending non-cut-off NCE reserved band FM translator applications).

¹³ On May 3, 2010, Smile filed a petition for reconsideration of the dismissal of the Smile Application, arguing that dismissal unfairly prejudiced its position vis-à-vis any LPFM applications that might be accepted before the next NCE FM translator window is opened. See *Broadcast Applications*, Public Notice, Report No. 27233 (MB May 11, 2010) at 24. On December 14, 2010, the Bureau granted Smile’s petition for reconsideration and reinstated the

has not been another new NCE FM translator filing window since the Smile Application was reinstated, the Smile Application remains pending. In the Supplement, Big Rapids contends that the procedural status of the Smile Application “should not have any bearing on the outcome of [the Application].”¹⁴

Mentor Objection. In the Objection, Mentor argues that: (1) Big Rapids’ amendment of the Application to attach its articles of incorporation was not a permissible “minor” amendment under section 73.871(c);¹⁵ and (2) Big Rapids falsely certified that it was physically headquartered or has a campus within 20 miles from the station’s proposed transmitter site or that 75% of its board members reside within 20 miles of such site.¹⁶ Specifically, Mentor claims that the provided headquarters address is a residence, not a business, and that none of the persons listed as residents at that address on whitepages.com appear on the Application.¹⁷ Mentor further alleges that two of the board members do not live at the addresses provided and states that a third board member’s address is more than 20 miles from the proposed transmitter site.¹⁸ In support of these allegations, Mentor provides screenshots of various online sources, including Google Maps/Google Earth, realtor.com, and whitepages.com, and a Nonprofit Corporation Annual Report filed by Big Rapids in 2022 (Annual Report).¹⁹

In its Objection Opposition, Big Rapids responds that since the close of the 2023 new LPFM filing window, Bureau staff have “routinely been requesting from LPFM applicants” amendments attaching articles of incorporation to demonstrate their nonprofit status.²⁰ Regarding the addresses of its headquarters and board members, it claims that Mentor relies on “poorly sourced” online information to challenge its certifications in the Application and asserts that the address information provided in the Application is correct.²¹ Although section 73.853 requires only one criterion to satisfy the community-based criteria to be eligible for LPFM authorization, Big Rapids addresses Mentor’s allegations regarding both its headquarters and board members’ residences. First, Big Rapids states that the provided headquarters address is correct, as confirmed by the Annual Report to the Michigan Secretary of State and by the physical receipt of Mentor’s mailed Objection at that address.²² It also asserts that the addresses for its board members are correct, providing a copy of a lease to document one residence and citing to local property records for the other.²³

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),²⁴ petitions to deny and informal objections must provide properly supported allegations of fact that, if true,

Smile Application without issuing a written decision. *See Broadcast Actions*, Public Notice, Report No. 27385 (MB Dec. 17, 2010) at 13.

¹⁴ Supplement at 1.

¹⁵ Objection at 2 (citing 47 CFR § 73.871(c) (defining seven categories of permissible minor amendments to new and major change LPFM application after the close of a filing window)).

¹⁶ Objection at 3 (citing 73.853).

¹⁷ Objection at 4.

¹⁸ *Id.* at 4-6. Mentor does not raise any concerns about the residence of Big Rapids’ fourth board member.

¹⁹ Objection at 10-33 (Exhibits).

²⁰ Objection Opposition at 2.

²¹ *Id.* at 1.

²² *Id.* at 2-3.

²³ *Id.* at 1-2.

²⁴ 47 U.S.C. § 309(d).

would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²⁵ Smile and Mentor have not met this burden.

Smile Petition. As an applicant for a new LPFM station, Big Rapids must protect pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice* by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.²⁶ Like all LPFM stations, if and when the Station commences operation, it must then protect first-adjacent translator stations, such as the Smile Translator if then licensed and operating, from actual interference to the reception of input signals.²⁷ Whether the Station may or may not cause such interference to the Smile Translator in the future is not a consideration at the initial application stage.

Smile's request for immediate processing of the Smile Application is irrelevant to our consideration of the Application, since the Application must protect pending applications as well as licensed or permitted stations equally. Not only is this argument outside the scope of this proceeding, it is impermissibly raised in a reply pleading.²⁸ Therefore, we will not address it further here.

Mentor Objection. Only minor amendments to new and major change applications are accepted after the close of a new LPFM filing window.²⁹ Section 73.871 lists seven categories of such minor amendments.³⁰ Big Rapid's amendment to attach its articles of incorporation falls within the category of "other changes in general and/or legal information" set out in section 73.871(c)(5).³¹ As the Commission explained in the adopting order, "We will not restrict the scope of [non-technical amendments] with two exceptions"—namely, amendments that improve an applicant's comparative position and amendments that reflect a more than 50% change in the organization's ownership.³² As a non-technical amendment that does not fall under either of these two exceptions, we conclude that Big Rapid's amendment is permitted by section 73.871(c)(5).³³

We also find that Mentor has failed to adequately substantiate its claims that the headquarters

²⁵ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁶ See *Procedures Public Notice* at 3.

²⁷ 47 CFR § 73.827(b). Section 73.827(a) only applies to applications specifying third-adjacent channels and is therefore inapplicable here.

²⁸ See 47 CFR § 1.45(c) (limiting arguments made in replies to "matters raised in the oppositions").

²⁹ 47 CFR § 73.871(c).

³⁰ 47 CFR § 73.871(c)(1)-(7).

³¹ See 47 CFR § 73.871(c)(5).

³² *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8029, para. 7 (2001).

³³ We further note that the Commission allows timely curative amendments except where such a cure is precluded by a specific rule or by clearly established policy. See, e.g., *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 329 (D.C. Cir. 1994) (holding that the Commission must provide "clear and explicit" notice if it wishes to treat a defect as incurable); *Los Angeles Social Justice Radio Project*, Memorandum Opinion and Order, 31 FCC Rcd 7506, 7510, para. 7 (2016) (allowing a curative amendment specifying new coordinates for a post-window LPFM amendment and listing examples of fatal defects in LPFM applications, established by specific rule or policy, that cannot be cured by subsequent amendment).

and/or board member addresses provided in the Application are incorrect and rely on Big Rapids' certifications under penalty of perjury and additional supporting documentation in this regard. We take this opportunity to caution parties wishing to rely purely on online sources to make every reasonable effort to verify or authenticate the information provided, including, for example, making a site visit to the relevant location, obtaining a statement from an individual with personal knowledge of the facts alleged, or at the very least corroborating the information using another reliable online source, preferably a government or other official source. Any website used must be clearly identified with the site owner or publisher, title of the page, URL address, last date visited, and any other relevant information. If reviewing staff cannot identify or verify a submission, it will be excluded from consideration.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the petition to deny filed by Smile FM on February 5, 2024 (Pleading File No. 238305), and the informal objection filed by Mentor Partners, Inc. on February 27, 2024 (Pleading File No. 239850) **ARE DENIED** and the application for a construction permit for a new low power FM station at Big Rapids, Michigan, filed by Big Rapids Wireless Inc. on December 13, 2023 (Application File No. 232761), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-795

Released: August 9, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM AND THE MANDATORY DISASTER RESPONSE INITIATIVE FOR HURRICANE DEBBY IN NORTH CAROLINA AND SOUTH CAROLINA

The Federal Communications Commission (FCC) has deactivated its Disaster Information Reporting System (DIRS) and Mandatory Disaster Response Initiative (MDRI) for Hurricane Debby at the request of the States of North Carolina and South Carolina, and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency.¹ During DIRS activations, communications providers that provide service to specified areas submit and update information through DIRS regarding, *inter alia*, the status of their communications equipment, restoration efforts, and power.² During MDRI activations, the Commission requires facilities-based mobile wireless providers that offer service to the disaster-affected area to perform the following functions: (1) provide for reasonable roaming under disaster arrangements when technically feasible; (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.³

Effective today, no further reports to DIRS are requested in response to Hurricane Debby within the States of North Carolina and South Carolina. Facilities-based mobile wireless providers are no longer required to perform MDRI-related functions for the States of North Carolina and South Carolina.⁴ The Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules, which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for any new network outages for the area covered by DIRS reporting for Hurricane Debby.⁵

¹ DIRS is a mandatory, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, use to report communications infrastructure status and situational awareness information during times of crisis. *See* 47 CFR § 4.18 (DIRS); 47 CFR § 4.17 (MDRI).

² *See* 47 CFR § 4.18(a) (requiring cable communications, wireline, wireless, and interconnected VoIP providers to report their infrastructure status in DIRS); FCC, Disaster Information Reporting System (DIRS), <https://www.fcc.gov/dirs> (last visited Aug. 9, 2024).

³ *See* 47 CFR § 4.17(a)(3)(i)-(v).

⁴ Note that the MDRI has been activated in response to Tropical Storm Debby for the State of Virginia. *See FCC Activates MDRI in Virginia for Debby*, Public Notice, DA 24-786 (Aug. 9, 2024).

⁵ 47 CFR § 4.9(a) (cable); 47 CFR § 4.9(e) (wireless); 47 CFR § 4.9(f) (wireline); 47 CFR § 4.9(g) (interconnected VoIP); *see also* 47 CFR § 4.18(a) (suspending NORS requirements for cable, wireless, wireline, and interconnection VoIP providers required to report in DIRS pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS).

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.

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 these events occur. The FCC continues to be available to address emergency communications needs related to Hurricane Debby 24 hours per day, seven days per week through our 24-hour operations center, which can be reached at 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 submitted data to DIRS and that participated in the MDRI in the aftermath of Hurricane Debby. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts and participation in the MDRI ensures effective coordination and planning to maintain and restore network connectivity. The FCC published its final daily communications status report for Hurricane Debby today, August 9, 2024.

For further information concerning DIRS, 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

For further information concerning the MDRI, please contact:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccops@fcc.gov

For more information on the FCC's response to Hurricane Debby, please go to www.fcc.gov/Debby

- 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>

DA 24-796
Released: August 9, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-241

Comments Due: August 26, 2024

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 9, 2024**, 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 **August 26, 2024**.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 paper copies must file an original and one copy of each filing. Such filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

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 47 CFR § 1.1200 *et seq.*

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.

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).

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): Stanacard LLC (Stanacard)

WC Docket No. 24-241, Comp. Pol. File No. 1936

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-241*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-241*%22)))

Affected Service(s) – interconnected VOIP service via the KeKu application and via the web

Service Area(s) – in all 50 states, the District of Columbia, and Puerto Rico

Authorized Date(s) – on or after September 9, 2024

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: On August 8, 2024, Stanacard filed a supplemental letter clarifying the nature of the Affected Service and additional details regarding the customer notice.



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 24-797

Released: August 7, 2024

THE FEDERAL COMMUNICATIONS COMMISSION REFINES SCOPE OF THE DISASTER INFORMATION REPORTING SYSTEM AND THE MANDATORY DISASTER RESPONSE INITIATIVE FOR COMMUNICATIONS IMPACTED BY HURRICANE DEBBY IN MULTIPLE STATES

The Federal Communications Commission (FCC), 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, has announced a deactivation of the Disaster Information Reporting System (DIRS) and the Mandatory Disaster Initiative (MDRI) for the following areas in Florida affected by Hurricane Debby:

Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Pasco, Pinellas, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.¹

Communications providers do not need to provide any additional reporting in DIRS for these areas in Florida with respect to Hurricane Debby. 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 South Carolina:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

Expansion of DIRS to include counties in North Carolina:

Further, the FCC is expanding its disaster data collection to include the following counties in North Carolina impacted by Hurricane Debby.

North Carolina: Alamance, Anson, Beaufort, Bladen, Brunswick, Cabarrus, Carteret, Chatham, Columbus, Craven, Cumberland, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Greene, Guilford, Harnett, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Pitt, Randolph, Richmond, Robeson, Rowan, Sampson, Scotland, Stanly, Union, Wake, Wayne, and Wilson.

¹ *The Federal Communications Commission Announces the Activation of the Disaster Information Reporting System for Communications Impacted by Tropical Storm Debby in Florida*, Public Notice, DA 24-761 (rel. Aug. 4, 2024) (“Tropical Storm Debby DIRS Activation PN”).

On August 4, 2024, the Public Safety and Homeland Security Bureau (PSHSB) of the 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)² in response to Tropical Storm, now Hurricane Debby.³ The State of North Carolina has asked the Commission to expand the data collection to include specified counties in North Carolina with initial reports due on Thursday, August 8, 2024.

The Commission requests that communications providers serving any areas listed in this notice where DIRS is active 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/dirs>. 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 DEBBY. 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. **The next reports are requested at 10:00 a.m. (EDT) on Thursday August 8, and every day after that by 10:00 a.m. (EDT) until DIRS is deactivated.**

Communications providers that serve an area listed in this notice 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.

MDRI EXPANDED TO COUNTIES IN NORTH CAROLINA:

With the expansion of the DIRS activation to include certain counties in North Carolina, facilities-based mobile wireless providers are reminded of their obligations under the Mandatory Disaster Response Initiative (MDRI), which will also apply to these additional counties in South Carolina for which DIRS is activated.⁴

² DIRS is a web-based system that communications providers, including wireless, wireline, broadcast, cable, and Voice over Internet Protocol providers use to report communications infrastructure status and situational awareness information during times of crisis.

³ See *Tropical Storm Debby DIRS Activation PN* at 1.

⁴ *The Federal Communications Commission Announces the Activation of the Mandatory Disaster Response Initiative (MDRI) for Communications Impacts from Tropical Storm Debby in Florida*, Public Notice, DA 24-766 (rel. Aug. 4, 2024).

ADDITIONAL COUNTIES FOR MDRI ACTIVATION INCLUDE:

North Carolina: Alamance, Anson, Beaufort, Bladen, Brunswick, Cabarrus, Carteret, Chatham, Columbus, Craven, Cumberland, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Greene, Guilford, Harnett, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Pitt, Randolph, Richmond, Robeson, Rowan, Sampson, Scotland, Stanly, Union, Wake, Wayne, and Wilson.

Upon the release of this Public Notice, all facilities-based mobile wireless providers operating in the above-referenced areas are hereby notified and required to: (1) provide for reasonable roaming under disaster arrangements when technically feasible;⁵ (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies;⁶ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁷

Facilities-based mobile wireless providers that serve the above-referenced areas and that have provided contact information in DIRS prior to Hurricane Debby will be individually notified that the MDRI has been activated in their area.

PSHSB will announce when the MDRI has been deactivated by subsequent Public Notice. Providers should familiarize themselves with the Commission's MDRI requirements.⁸ Details on the Mandatory Disaster Response Initiative can be found on the FCC website at <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

MDRI REMAINS ACTIVATED IN:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.⁹

Please continue to provide information for the impacted counties that are already in the disaster area.

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

For further information concerning DIRS, please contact:

⁵ See 47 CFR § 4.17(a)(3)(i) (detailing criteria for activating roaming under disaster arrangements).

⁶ See 47 CFR § 4.17(a)(3)(ii) (explaining what mutual aid arrangements must include).

⁷ 47 CFR § 4.17(a)(3)(i)-(v); see also FCC, *Wireless Network Resiliency During Disasters* (June 4, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

⁸ 47 CFR § 4.17.

⁹ See *Tropical Storm Debby DIRS Activation PN* at 1; see also *Tropical Storm Debby MDRI Activation PN*.

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, fccops@fcc.gov

For further information concerning the MDRI, please contact:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccops@fcc.gov

For more information on the FCC's response to Hurricane Debby, please go to www.fcc.gov/Debby.

- 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 24-798

Released: August 10, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE DEACTIVATION OF THE MANDATORY DISASTER RESPONSE INITIATIVE IN VIRGINIA

The Federal Communications Commission (FCC) has deactivated the Mandatory Disaster Response Initiative (MDRI) for communications impacts from Tropical Depression Debby at the request of the Commonwealth of Virginia, and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency. During MDRI activations, the FCC requires facilities-based mobile wireless providers that offer service to the disaster-affected area to perform the following functions: (1) provide for reasonable roaming under disaster arrangements when technically feasible; (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.¹

Effective today, facilities-based mobile wireless providers are no longer required to perform the MDRI functions for the Virginia counties impacted by Tropical Depression Debby.. Those counties include: Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Charlotte, Craig, Cumberland, Floyd, Fluvanna, Franklin, Greene, Halifax, Henry, Highland, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Page, Patrick, Pittsylvania, Prince Edward, Rappahannock, Roanoke, Rockbridge, Rockingham, and Shenandoah.²

The FCC continues to be available to address emergency communications needs related to Hurricane Beryl 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. For further information concerning this MDRI activation, please contact the following PSHSB staff and the FCC 24/7 Operations Center:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
James Wiley, (202) 418-1678, james.wiley@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccoperationcenter@fcc.gov

- FCC -

¹ 47 CFR § 4.17(a)(3)(i)-(v).

² *The FCC Announces the Activation of the Mandatory Disaster Response Initiative (MDRI) for Communications Impacts from Tropical Depression Debby in Virginia*, Public Notice, DA 24-786 (rel. Aug. 9, 2024).



Federal Communications Commission
Washington, D.C. 20554

August 12, 2024

DA 24-799
In Reply Refer to:
1800B3-ATS
Released: August 12, 2024

Breakthrough Community Service
c/o Arthur Siggers
1313 Country Club Rd
Hattiesburg, MS 39437
(sent by electronic mail)

In re: Breakthrough Community Services
New LPFM, Baton Rouge, Louisiana
Facility ID No. 788796
Application File No. 0000233170

Dear Applicant:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Baton Rouge, filed by Breakthrough Community Services (BCS).¹ For the reasons set forth below, we dismiss the Application.

Background. BCS filed the Application during the 2023 LPFM filing window.² In the Application, BCS certifies that it qualifies as a local entity because it is physically headquartered within 20 miles of its proposed transmitter site.³ BCS lists its local address as “1313 Country Club Rd, Hattiesburg, MS 39437” (Hattiesburg Address).⁴ The proposed transmitter site that BCS identifies in the Application is located at 30° 25' 21.5" N, 091° 10' 57.3" W (Transmitter Site).⁵

¹ Application File No. 0000233170 (filed Dec. 15, 2023).

² *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

³ Application, Legal Certifications Section, Community-Based Criteria questions. The transmitter is located in the Baton Rouge radio market, which is outside a top 50 urban market. See The Nielsen Company (US) LLC, Radio Market Survey Population & Information, Spring 2024, at 2 (2024) https://www.nielsen.com/wp-content/uploads/sites/2/2024/04/Populations_Rankings.pdf (accessed Aug. 7, 2024). Thus, either BCS’s headquarters must be within 20 miles of the proposed site for the transmitting antenna, or, alternatively, 75% of BCS’s board members must reside within 20 miles of the proposed site for the transmitting antenna. 47 CFR § 73.853(b)(1) and (2). However, BCS certified that 75% of its board members do *not* reside within 20 miles of its proposed transmitter site. *Id.*

⁴ See Application, Applicant Information Section. BCS also lists the Hattiesburg Address for each of its three board members. *Id.*, Parties to the Application Section. The incorporation documents from the Secretary of State of the State of Mississippi that BCS provides in the Application list the Hattiesburg Address as the address of BCS’s registered agent. Application at Attach. “Breakthrough Community Services - Incorporation.pdf”.

⁵ Application at Antenna Location Data Section, Coordinates question.

Discussion. We find that BCS fails to meet the localism requirements of section 73.853(b) of the Commission's rules (Rules).⁶ An LPFM applicant must qualify as a "local" entity at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).⁷ To qualify as local as a nonprofit educational organization applicant, an LPFM applicant outside of the top 50 urban markets, such as BCS, must either (1) be physically headquartered or have a campus within 20 miles of the transmitting antenna site proposed in its application; or (2) have 75% of its board members residing within 20 miles of the transmitting antenna site proposed in its application.⁸

In the Application, BCS certifies that it satisfies the local applicant criteria, claiming its physical headquarters is within 20 miles of the proposed site for the transmitting antenna, but certifies "no" as to whether 75% of its board members reside within 20 miles of the proposed site for the transmitting antenna.⁹ We find that BCS does not satisfy the requirements of section 73.853(b)(1). The Hattiesburg Address BCS provided for its headquarters is approximately 148 miles from the Transmitter Site in Baton Rouge, and thus beyond the 20 mile limit specified in section 73.853(b)(1).¹⁰ Therefore, we conclude that BCS does not qualify as local under section 73.853(b) of the Rules.¹¹ Accordingly, we find BCS ineligible to hold an LPFM license.¹²

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the application for a construction permit for a new LPFM station at Baton Rouge, Louisiana, filed by Breakthrough Community Services on December 15, 2023 (Application File No. 0000233170) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶ 47 CFR § 73.853(b)(1), (2).

⁷ See Instructions for LPFM Application, Legal Certifications, Eligibility Certifications, and Community-Based Criteria Certifications questions. See also LPFM Application, Legal Certifications Section, Eligibility Certifications questions.

⁸ 47 CFR § 73.853(b)(1), (2). See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2219-20, para. 33 (2001) (localism requirement may be met by relying on either headquarters or board member residences).

⁹ See Application at Legal Certifications, Community-Based Criteria Certifications.

¹⁰ Because BCS specified the same Hattiesburg Address that is 148 miles from the Transmitter Site as the residential address for its three board members, it also fails to satisfy the requirements of section 73.353(b)(2).

¹¹ See, e.g., *Bump FM Inc.*, Letter Order, DA 24-243, at 4 (MB Mar. 13, 2024).

¹² 47 CFR § 73.853(b). We note that, in general, a dismissed applicant has one opportunity to file a minor curative amendment to its application and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*. Any amendment and petition must be filed within 30 days of the dismissal, propose only minor changes, and comply with all relevant rules. See *Procedures Notice* at 12.



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 24-800

Released: August 13, 2024

**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 15, 2024**.¹ Covered 911 service providers shall file certifications using the Commission's online portal at <https://apps2.fcc.gov/rcs911/>.²

911 Reliability Requirements. Section 9.19(b) of the Commission's rules requires covered 911 service providers to take reasonable measures to provide reliable 911 service with respect to:

- (i) 911 circuit diversity for each of the critical 911 circuits used to provide service to each Public Safety Answering Point (PSAP) it serves;
- (ii) central office backup power for each central office it operates that directly serves a PSAP; and
- (iii) diverse network monitoring for each 911 service area it serves.³

911 Reliability Certification. For each of these requirements, and for each PSAP it serves (as to the circuit diversity requirements), each central office it operates that directly serves a PSAP (as to the backup power requirements) and each 911 service area it serves (as to the diverse network monitoring requirements), a covered 911 service provider must certify as to one of the following:

- (A) Confirmation that it has complied with the applicable requirement by performing the specific measures identified in section 9.19(c)(1)(i) (circuit diversity) (c)(2)(i) (backup power) or (c)(3)(i) (diverse network monitoring) for the PSAP, central office, or 911 service area, as applicable;⁴ or

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 *id.* § 9.19(a) (definitions of relevant terms for purposes of the circuit diversity, backup power, and diverse network monitoring requirements).

⁴ 47 CFR § 9.19(c)(1)(i), (c)(2)(i), (c)(3)(i).

- (B) A description of the alternative measures it has taken to mitigate the risks of 911 service failure associated with the relevant requirements for each PSAP, central office, or 911 service area where such alternative measures are in use, including a complete explanation of why those alternative measures are reasonably sufficient to mitigate the risk of failure at least to a comparable extent as the specific measures identified in the paragraphs listed above in the context of the specific network facilities at issue or other factors;⁵ or
- (C) A description and explanation of any steps that it is taking to remediate any deficiencies that it has identified with respect to such PSAP, central office, or 911 service area, and the date by which it anticipates completing such remediation steps;⁶ or
- (D) An explanation of why the requirement is not applicable to the specific PSAP, central office, or service area, such as because it does not operate any critical 911 circuits in the area.⁷

Companies that serve numerous PSAPs or service areas may choose to enter their certifications of compliance pursuant to item (A) above in an Excel spreadsheet, which is available for download on the main menu page of the 911 Reliability Certification System.⁸

Supplemental Explanations and Alternative Measures. Companies may submit supplemental explanations accompanying those certifications containing explanations and descriptions of any alternative measures they have taken to mitigate the relevant risks as per paragraph (B) above, remediation steps they are taking as per paragraph (C) above, or inapplicability of requirements as per paragraph (D) above. Supplemental explanations and descriptions of alternative measures must be complete. As the Commission stated in the *911 Reliability Certification Order*, the identification, descriptions, and explanation of alternative measures or remediation steps must be sufficiently detailed to “provide the Commission with... the information it needs to identify important weaknesses in 911 networks or a reasonable basis on which to hold service providers accountable for decisions affecting 911 reliability.”⁹ The Bureau may commence inquiries concerning inadequate certifications or those that demonstrate insufficient reliability¹⁰ and may, based on the response to such inquiries, issue orders requiring covered 911 service providers to take remedial actions to improve their 911 network reliability.¹¹

⁵ See 47 CFR § 9.19(c)(1)(ii)(A), (c)(2)(ii)(A), (c)(3)(ii)(A); *911 Reliability Certification Order*, 28 FCC Rcd at 17493, para. 48; *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Order on Reconsideration, 30 FCC Rcd 8650, 8651, para. 2 (2015).

⁶ See 47 CFR § 9.19(c)(1)(ii)(A), (c)(2)(ii)(A), (c)(3)(ii)(A).

⁷ See 47 CFR § 9.19(c)(1)(ii)(B), (c)(2)(ii)(B), (c)(3)(ii)(B).

⁸ Please note that only users registered as coordinators will have access to the Excel upload and download capability.

⁹ *911 Reliability Certification Order*, 28 FCC Rcd at 17495, para. 54.

¹⁰ *Id.* at 17493, para. 49 (“[W]e reserve the right to request additional information, at the time of certification or thereafter, to verify the accuracy of a certification or determine whether alternative measures are reasonable. . . . Examples of such records include diagrams of network routing, records of circuit audits, backup power deployment and maintenance records, and documentation of network monitoring routes and capabilities.”); *id.*, para. 48 n.110 (“If a Covered 911 Service Provider cannot substantiate its certification responses, it will not be deemed to be taking reasonable measures to provide reliable 911 service and may be subject to enforcement action.”); 47 CFR §§ 0.392(h), (j), 1.17(a).

¹¹ 47 CFR § 0.392(j) (“The Chief of the Public Safety and Homeland Security Bureau is delegated authority to... order remedial action on a case-by-case basis to ensure the reliability of 911 service in accordance with such rules
(continued....)”)

Attestation. 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.¹² Supplemental explanations and descriptions of alternative measures may be submitted as a part of the Adobe Acrobat (*.pdf) format attestation file as a single file appended to the end of the attestation.

Registering to Use the 911 Reliability Certification System. Covered 911 service providers may register new users on the login page at <https://apps2.fcc.gov/rcs911/>. 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 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.

Frequently Asked Questions and User Manual. More detailed instructions on how to complete the annual reliability certifications are available as Frequently Asked Questions (FAQs) at <https://www.fcc.gov/frequently-asked-questions-fcc-911-reliability-certification>, and in a User Manual posted on the main menu of the 911 Reliability Certification System.

Further Information. For further information about the 911 Reliability Certification System and/or the filing process, please contact 911ReliabilityCertification@fcc.gov. For further information about the Commission's 911 reliability rules, please contact Chris Fedeli at (202) 418-1514 or 911ReliabilityCertification@fcc.gov.

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and policies.”); *911 Reliability Certification Order*, 28 FCC Rcd at 17497, para. 63 (“If the Bureau’s review indicates that a provider’s alternative measures are not reasonably sufficient to ensure reliable 911 service, the Bureau should engage with the provider and other interested stakeholders (e.g., affected PSAPs) to address any shortcomings. To the extent that a collaborative process with a provider does not yield satisfactory results, the Bureau may order remedial action, consistent with the authority delegated in this Report and Order[.] . . . to eliminate avoidable single points of failure, to install additional backup power capabilities at a central office that directly serves a PSAP, or to upgrade its network monitoring facilities; in situations where collaborating with the provider does not yield satisfactory results . . .”).

¹² 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, DC 20554

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

DA 24-801

Released: August 12, 2024

FCC ANNOUNCES THE SEPTEMBER 24, 2024, MEETING OF THE CONSUMER ADVISORY COMMITTEE

By this Public Notice, the Federal Communications Commission (FCC) announces the next meeting of the Consumer Advisory Committee (CAC) to be held on, Tuesday, September 24, 2024, starting at 1:00 p.m. ET. This will be an in-person meeting taking place in the FCC's Commission Meeting Room located at 45 L Street NE in Washington DC. The meeting will also be streamed live with video and audio coverage available at www.fcc.gov/live.

At this meeting, CAC members are expected to present a report in response to its charge from the FCC. Presentation of the recommendations will be led by the Chairs of Working Group 1 – Technical and Working Group 2 – Outreach and Education. The presentations will be followed by a full Committee discussion. The report will include content based on the CAC's charge to address the implication of emerging artificial intelligence technologies on consumer privacy and protection, including how AI can help protect vulnerable consumer populations from unwanted and illegal calls, along with other consumer protection issues. The meeting agenda will be available at <https://www.fcc.gov/consumer-advisory-committee> and may be modified at the discretion of the CAC Co-Chairs and Designated Federal Officer (DFO).

Members of the public will be able to provide comments either in person if they are attending the meeting or by sending their questions or comments to livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Open captioning and sign language interpreting will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requesters of such accommodations may contact the Consumer and Governmental Affairs Bureau at fcc504@fcc.gov, or (202) 418-0530. Such requests should include a detailed description of the accommodation needed and how the requester can be contacted. Requests should be made as early as possible.

For general information about the CAC, visit <https://www.fcc.gov/consumer-advisory-committee>. For specific questions about the CAC, contact Keyla Hernandez-Ulloa, Designated Federal Officer, and David Pérez, Deputy Designated Federal Officer, by sending an email to CAC@fcc.gov.

- 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 24-802

Released: August 12, 2024

**AGENDA RELEASED FOR THE AUGUST 13, 2024 MEETING OF THE
COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL
AND WORKING GROUP MEMBERS ANNOUNCED**

GN Docket No. 17-208

In this Public Notice, the Wireline Competition Bureau (WCB) announces that Federal Communications Commission (FCC or Commission) Chairwoman Jessica Rosenworcel has selected individuals to serve on the three working groups of the Communications Equity and Diversity Council (CEDC or Committee): Digital Empowerment and Inclusion, Diversity and Equity, and Innovation and Access. A list of the current CEDC membership and working group selections is attached to this Public Notice. With this Public Notice, WCB also announces the anticipated agenda for the second meeting of the CEDC under its new charter, ending June 22, 2025. As announced in the Federal Register and in a Public Notice released August 5, 2024, the meeting is scheduled to be held, consistent with the Federal Advisory Committee Act,¹ on August 13, 2024.²

As detailed in the attachment, the agenda for the meeting will include introducing CEDC working group chairs and new members, announcing working group selections, receiving an update on the Affordable Connectivity Program (ACP), and receiving a presentation regarding the functions of the FCC's Office of Communications Business Opportunities. This agenda may be modified at the discretion of the CEDC Chair and the Designated Federal Officer.

The meeting will be held in a hybrid manner, from 10:00 am to no later than 2:00 pm ET. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at <https://www.fcc.gov/live>. While the CEDC's meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The public may follow the meeting on the Commission's YouTube page at <https://www.youtube.com/user/fccdotgovvideo>. Members of the public may submit questions during the meeting to livequestions@fcc.gov. Members of the public also may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Any comments should be filed in GN Docket No. 17-208.

¹ 5 U.S.C. App. 10.

² Notice of this meeting was published in the Federal Register on July 25, 2024, available at <https://www.federalregister.gov/documents/2024/07/25/2024-16287/meeting-of-the-communications-equity-and-diversity-council>. See also *FCC Announces August 13, 2024 Meeting of the Communications Equity and Diversity Council*, Public Notice, DA 24-773 (WCB Aug. 5, 2024).

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

More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>. You may also contact Rodney McDonald, Designated Federal Officer (DFO) of the CEDC, (202) 418-7513, Rodney.McDonald@fcc.gov; Diana Coho, Deputy DFO of the CEDC, (717) 338-2848, Diana.Coho@fcc.gov; Jaime McCoy, Deputy DFO of the CEDC, (202) 418-2320, Jaime.McCoy@fcc.gov; or Sima Nilsson, Deputy DFO of the CEDC, (202) 418-2708, Sima.Nilsson@fcc.gov.

– FCC –

COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL**Designated Federal Officer and Deputy Designated Federal Officers:**

Rodney McDonald, Designated Federal Officer
Diana Coho, Deputy Designated Federal Officer
Jaime McCoy, Deputy Designated Federal Officer
Sima Nilsson, Deputy Designated Federal Officer

Chair:

Heather Gate, Vice President of Digital Inclusion
Connected Nation

Vice Chairs:

Nicol Turner Lee, Ph.D., Director – Center for Technology Innovation, Senior Fellow – Governance
Studies Program
Brookings Institution

Susan Au Allen, Chairman, National President and CEO
US Pan Asian American Chamber of Commerce Education Foundation

Working Groups:**Digital Empowerment and Inclusion Working Group****Chair:**

Anisa Green, Director, Federal Regulatory
AT&T

Members:

Jenna Alsayegh, Senior Director of Strategic Initiatives & Partnerships
USTelecom

Alternate - Diana Eisner, Vice President, Policy & Advocacy
USTelecom

Patricia Boyers, Chairman of the Board
ACA Connects

Robert Branson, President and CEO
Multicultural Media, Telecom and Internet Council

Edgar Class, Partner, Wiley Rein LLP
Representing the Hispanic National Bar Association

Michele Cober, Director, Strategic Alliances
Verizon

Norma Estela Fernandez, CEO
EveryoneOn

Julianne Goodfellow, Vice President, Government Affairs
National Multifamily Housing Council (NMHC)

Jennifer Gutierrez, Council Member
New York City Council

Nicole Lazarre, Vice President of Policy and External Affairs
Charter Communications

Mike Lynch, Legislative & Regulatory Affairs Director
National Association of Telecommunications Officers and Advisors (NATOA)

Rosa Mendoza, Founder, President and CEO
ALLvanza

Ryan Palmer, Global Digital Equity Strategist & Director
Microsoft

Will Pfeffer, Civic Technologist
Metropolitan Area Planning Council (MAPC)

Lakecia Foster Stickney, Executive Director, Public Policy
Comcast

Alisa Valentin, Broadband Policy Director
Public Knowledge

Felicia Welch, Public Service Executive
Kansas Department of Children and Families

Odette Wilkens, Founder, President & General Counsel
Wired Broadband, Inc.

Diversity and Equity Working Group

Chair:

Christopher Wood, Executive Director
LGBT Tech

Members:

Graham “Skip” Dillard, Brand Manager
Audacy Broadcasting

Shayna Englin, Director, Digital Equity Initiative
California Community Foundation

JudeAnne Heath, Executive Director
HTTP - Hispanic Technology & Telecommunications Partnership

Dr. Ronald Johnson, Ph.D., Senior Advisor and Chief Strategist for Diversity, Equity and Inclusion
Wireless Infrastructure Association

Aama Nahuja, Legal Counsel
A Wonder Media Company

Otto Padron, President & CEO
Meruelo Media

Louis Peraertz, Vice President of Policy
WISPA - Wireless Internet Service Providers Association

Brian Scarpelli, Senior Global Policy Counsel
ACT/The App Association

Adria Tinnin, Director of Race Equity Policy
The Utility Reform Network (TURN)

J. Augusto Valdez, Partner & Chief Operating Officer
2042 Media

James Winston, President
National Association of Black Owned Broadcasters

Innovation and Access Working Group

Chair:
TBA

Members:
Michael Fernández, Vice President of Marketing
V-Me Media, Inc.

Charles Harrell, II, President and CEO
The IT Architect Corporation

David Honig, President and CEO
JulGlo Productions LLC

Mike Johns, Founder & CEO
Digital Mind State

Sherman Kizart, Managing Director and Founder
Kizart Media Partners

Henry M. Rivera, Partner, Wiley Rein, LLP
Representing The Emma L. Bowen Foundation

Steven C. Roberts, Founder & President
The Roberts Companies

Ellen Schned, Founder & CEO
Strong Women Alliance

M. Anne Swanson
Representing GPS Innovation Alliance

Joycelyn Tate, Senior Policy Advisor
Black Women's Roundtable (BWR), National Coalition on Black Civic Participation (NCBCP)

Dr. Christopher Terry, Ph.D., Associate Professor
University of Minnesota, Twin Cities, Hubbard School of Journalism & Mass Communications

Leticia Latino van-Splunteren, CEO
Neptuno USA

Rahul Walia, President
Touchdown Media

Julie Wenah, Associate General Counsel & Product Lead for Civil Rights, Meta
Representing INCOMPAS



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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ATTACHMENT



COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

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

August 13, 2024
10:00 a.m. – 2:00 p.m.

AGENDA

- 10:00 am: **Welcome and Opening of Meeting**
Rodney McDonald, Designated Federal Officer, CEDC, Wireline Competition Bureau, FCC
- 10:02 am: **Opening Remarks and Introduction of DFO & Deputy DFOs**
Rodney McDonald, Designated Federal Officer, CEDC, Wireline Competition Bureau, FCC
- Diana Coho, Deputy Designated Federal Officer, CEDC, Consumer and Governmental Affairs Bureau, FCC
- Jaime McCoy, Deputy Designated Federal Officer, CEDC, Wireline Competition Bureau, FCC
- Sima Nilsson, Deputy Designated Federal Officer, CEDC, Media Bureau, FCC
- 10:12 am: **Opening Remarks of CEDC Chair/Vice Chairs**
Heather Gate, Chair, CEDC, Connected Nation
- Nicol Turner Lee, Ph.D., Vice Chair, CEDC, Brookings Institution
- Susan Au Allen, Vice Chair, CEDC, US Pan Asian American Chamber of Commerce Education Foundation
- 10:29 am **Call to Order of the August 13, 2024 CEDC Meeting**
Heather Gate, Chair, CEDC, Connected Nation

10:30 am	Roll Call of CEDC Members/Working Group Members Heather Gate, Chair, CEDC, Connected Nation
	Rodney McDonald, Designated Federal Officer, CEDC, Wireline Competition Bureau, FCC
10:50 am	CEDC Member & Working Group Member Updates/Disclosures Heather Gate, Chair, CEDC, Connected Nation
	Individual Members In Attendance
10:55 am:	Introduction & Remarks of Working Group Chairs Heather Gate, Chair, CEDC, Connected Nation
	Anisa Green, Chair, CEDC Digital Empowerment & Inclusion Working Group, AT&T
	Christopher Wood, Chair, CEDC Diversity and Equity Working Group, LGBT Tech
	Heather Gate, Chair, CEDC, Connected Nation for CEDC Innovation and Access Working Group
11:15 am:	Information/Update on the Affordable Connectivity Program (ACP) Jamil Kadre, Wireline Competition Bureau, FCC
11:30 am:	Information on the FCC's Office of Communications Business Opportunities (OCBO) Joycelyn James, OCBO, FCC
11:40 am	Questions/Comments from the Public
11:50 am	Closing Remarks Rodney McDonald, Designated Federal Officer, CEDC, Wireline Competition Bureau, FCC
	Heather Gate, Chair, CEDC, Connected Nation
	Nicol Turner Lee, Ph.D., Vice Chair, CEDC, Brookings Institution
	Susan Au Allen, Vice Chair, CEDC, US Pan Asian American Chamber of Commerce Education Foundation
12:10 pm	Adjournment Heather Gate, Chair, CEDC, Connected Nation



PUBLIC NOTICE

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

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DA 24-803

Released: August 13, 2024

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY BHN IP ENABLED SERVICE, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-218¹

Comments Due: August 28, 2024

BHN IP Enabled Services, LLC (BHN or Applicant, an interconnected Voice over Internet Protocol (VoIP) provider, filed a Numbering Authorization Application (Application) pursuant to section 52.15(g)(3) of the Federal Communications Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.² In its Application, BHN indicates that it intends to initially request numbers in Alabama, California, Florida, Georgia, Indiana and Michigan.³

In its Application, BHN includes the contact information and acknowledgements required by section 52.15(g)(3)(ii) of the Commission's rules.⁴ BHN provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.⁵ BHN also certifies that it complies with contribution, regulatory fee, and 911 obligations.⁶ In addition, BHN certifies that it has the

¹ We assign WC Docket No. 24-218 for this Application and all related filings by the applicant and interested parties. See *Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

² See Application of BHN IP Enabled Services, LLC for Authorization to Obtain Numbering Resources, WC Docket No. 24-218 (Mar. 15, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/103141823117238> (Application); see also 47 CFR § 52.15(g)(3).

³ Application at 3; see also *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6850, para. 24 & n.74 (2015) (*VoIP Direct Access to Numbers Order*).

⁴ Application at 1-5; see 47 CFR § 52.15(g)(3)(i)(A)-(N).

⁵ Application at 3, Exhs. A and B; see 47 CFR § 52.15(g)(3)(ii)(H).

⁶ Application at 3-4; see 47 CFR § 52.15(g)(3)(ii)(E), (J); see also *id.* §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); *id.* pts. 9 and 54, subpt. H.

financial, managerial, and technical expertise to provide reliable service.⁷ BHN further certifies that none of its key management and technical personnel are being or have been investigated by the Commission, or any law enforcement or regulatory agency, for failure to comply with any law, rule, or order.⁸ BHN certifies that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.⁹

GENERAL INFORMATION

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

Filing Requirements. Interested parties may file 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).

- Electronic Filers: Comments may be filed electronically by accessing ECFS at <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - 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.** Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any not sent by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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 email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

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

⁷ Application at 4; *see* 47 CFR § 52.15(g)(3)(ii)(K).

⁸ Application at 4; *see* 47 CFR § 52.15(g)(3)(ii)(K).

⁹ Application at 4; *see* 47 CFR § 52.15(g)(3)(ii)(M); *see also* 21 U.S.C. § 862.

- 1) DAA@fcc.gov;
- 2) Margoux Newman, Competition Policy Division, Wireline Competition Bureau, Margoux.Newman@fcc.gov;
- 3) Jordan Marie Reth, Competition Policy Division, Wireline Competition Bureau, Jordan.Reth@fcc.gov.

Ex Parte Rules. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰ 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.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹¹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

Please contact DAA@fcc.gov, Margoux Newman at Margoux.Newman@fcc.gov or Jordan Marie Reth at Jordan.Reth@fcc.gov for further information.

- FCC -

¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*

¹¹ See 47 CFR § 1.45(c).



PUBLIC NOTICE

Federal Communications Commission
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DA 24-804

Released: August 13, 2024

**NOTICE OF PROHIBITED PRESENTATIONS IN THE MATTERS OF PROMOTING
CONSUMER CHOICE AND WIRELESS COMPETITION THROUGH HANDSET
UNLOCKING REQUIREMENTS AND POLICIES (WT DOCKET NO. 24-186) AND
INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES; IMPLEMENTATION
OF THE MARTHA WRIGHT-REED ACT; RATES FOR INTERSTATE INMATE
CALLING SERVICES (WC DOCKET NOS. 23-62 AND 12-375)**

Notice is hereby given that the Commission received during the Sunshine Agenda Period prohibited written presentations in WT Docket No. 24-186 and in WC Docket Nos. 23-62 and 12-375 by the parties listed in the attached Appendix.

With specified exceptions not applicable here, section 1.1203 of the Commission's Rules, 47 CFR § 1.1203, prohibits the making of any presentation, whether *ex parte* or not, to decision-making personnel concerning any matter listed on the Commission's Sunshine Agenda, from the day after the Sunshine Agenda is released until the Commission releases the text of a decision or order relating to that matter or removes the item from the Sunshine Agenda. The instant presentations addressed the merits of the above-referenced proceedings, which were included on the Commission's Sunshine Agenda by Public Notice released July 11, 2024, for consideration at the July 18, 2024 open Commission meeting. On July 19, 2024, the Commission released a Notice of Proposed Rulemaking, *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, WT Docket No. 24-186, FCC 24-77 (July 19, 2024). On July 22, 2024, the Commission released a Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, FCC 24-75 (July 22, 2024).

Under section 1.1212(d) of the Commission's Rules, 47 CFR § 1.1212(d), presentations that are received during the Sunshine Period and neither meet an exception provided by section 1.1204(a) of the Commission's Rules, 47 CFR § 1.1204(a), nor are covered by a Commission waiver, shall be associated with, but not made a part of, the record in the relevant proceeding. In accordance with this rule, these presentations will be associated with, but not made part of, the record in the above-referenced proceedings.

The full text of these presentations are available for public inspection and copying during regular business hours at the FCC Reference Information Center, 45 L Street, NE, Washington, DC 20554. These filings may also be viewed in the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/search/search-filings>.

Action by the Office of General Counsel, Administrative Law Division.

APPENDIX**PROHIBITED PRESENTATIONS IN WC DOCKET NOS. 23-62 AND 12-375**

Filer	Date Received
Blythe & White Consultancy	July 12, 2024
John Jones, Virginia Sheriffs' Association	July 15, 2024
Mike Linder, et al., Montana Sheriffs and Peace Officers Association	July 15, 2024
Evangelina Garcia	July 17, 2024
Jonah Edelman, Stand for Children	July 17, 2024
Bianca Tylek, Worth Rises	July 17, 2024
Megan E. Noland, Major County Sheriffs of America	July 17, 2024
Sheriff Kieran Donahue, Canyon County Sheriff	July 19, 2024

PROHIBITED PRESENTATIONS IN WT DOCKET NO. 24-186

Filer	Date Received
Hunter Bulk	July 18, 2024

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

In the Matter of	)	
	)	
Holmes County Broadcasting Company, LLC	)	Facility ID 21155
Licensee of WAGR-FM, Lexington, Mississippi,	)	FRN: 0021382858
	)	
and	)	
	)	
WXTN(AM), Benton, Mississippi	)	Facility ID 27486
	)	FRN: 0021382858

ORDER TO PAY OR TO SHOW CAUSE

Adopted: August 13, 2024

Released: August 13, 2024

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 licenses held by Holmes County Broadcasting Company, LLC (Licensee) for WAGR-FM, Lexington, Mississippi and WXTN(AM), Benton, Mississippi (Stations) respectively, for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

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

3. For fiscal year (FY) 2013, the deadline for paying regulatory fees was September 20, 2013;³ for FY 2015, it was September 24, 2015;⁴ for FY 2016, it was September 27, 2016;⁵ for FY 2017, it

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

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

³ *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD September 4, 2013).

⁴ *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, DA 15-1013, 30 FCC Rcd 9941 (OMD September 11, 2015).

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

was September 26, 2017;⁶ for FY 2018, it was September 25, 2018;⁷ for FY 2019, it was September 27, 2019;⁸ for FY 2020, it was September 28, 2020;⁹ for FY 2022, it was September 30, 2022;¹⁰ and for FY 2023, it was September 20, 2023.¹¹ When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by section 9A(c)(1) of the Act¹² and section 1.1164 of the Rules,¹³ and interest and administrative costs set forth section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 9A(c)(2) of the Act and section 1.1940 of the Rules.¹⁴

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt for WAGR-FM of \$637.75 for FY 2013; \$964.82 for FY 2015; \$1,364.89 for FY 2016; \$338.22 for FY 2017; \$769.16 for FY 2018; \$1,273.18 for FY 2019; \$1,373.69 for FY 2020; \$1,483.49 for FY 2022; and \$857.02 for FY 2023; and unpaid regulatory fee debt for WXTN(AM) of \$297.87 for FY 2013; \$1,286.44 for FY 2015; \$1,703.40 for FY 2016; \$562.26 for FY 2017; \$699.02 for FY 2018; \$1,254.08 for FY 2019; \$1,277.85 for FY 2020; \$1,399.28 for FY 2022; and \$1,344.87 for FY 2023. Additional interest and other charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.¹⁵ When Licensee did not pay these regulatory fee debts, the Commission transferred all of the foregoing regulatory fee debts to the United States Department of Treasury (Treasury) for collection.¹⁶ At the Commission's request, the Treasury has returned those regulatory fee debts to the Commission for further collection. Additionally, please note that our records

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

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

⁸ *Regulatory Fee Filing Window is Extended to Friday, September 27, 2019*, Public Notice, DA 19-941, 34 FCC Rcd 8580 (OMD September 23, 2019).

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

¹⁰ *Fiscal Year 2022 Regulatory Fee Filing Deadline Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD September 28, 2022).

¹¹ *Payment Methods and Procedures for Fiscal Year 2023 Regulatory Fees*, Public Notice, DA 23- 765 (OMD August 28, 2023).

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

¹³ 47 CFR § 1.1164.

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

¹⁵ See 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Licensee of its delinquency in paying the regulatory fees owed by the Licensee. Emails from Robin Lott, Audio Division, FCC Media Bureau to Holmes County Broadcasting Company, LLC (March 31, 2023, 2:49 PM and 03:28 PM EDT).

¹⁶ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917.

show there is an overpayment of \$167.36 under this FRN,¹⁷ which the Commission will apply to reduce Licensee's delinquent regulatory fee debt, upon written instruction from Licensee.¹⁸

5. The Commission has authority under section 9A(c)(4) of the Act 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.¹⁹ 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 licenses for the Stations.

6. Under section 9A(c)(4)(C)(i) of the Act and section 1.1164(f)(1) of the Rules,²⁰ 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.²¹ Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.²²

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

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,²³ Holmes County Broadcasting Company, LLC is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2013, 2015, 2016, 2017, 2018, 2019, 2020, 2022 and 2023, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable to Licensee or should otherwise be waived or deferred.

¹⁷ The overpayment consists of payments made by Licensee to the Treasury for Treasury fees. When the Treasury returned the delinquent regulatory fee debt to the Commission, the Treasury cancelled its fee assessment and remitted the \$167.36 to the Commission.

¹⁸ Licensee may request that the Commission apply the \$167.36 payment to reduce its delinquent regulatory fee debt by electronic transmission to Cheryl.Collins@fcc.gov or Theresa.Meeks@fcc.gov. Licensee must include its FRN in the request. Upon receipt of the request, the Commission will apply the \$167.36 to Licensee's delinquent debt in accordance with 47 CFR § 1.1940(f).

¹⁹ 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).

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

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

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

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

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made through the Commission's Registration System (CORES)²⁴ or by wire transfer, and must include the FRNs 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)

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

Holmes County Broadcasting Company, LLC 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 Holmes County Broadcasting Company, LLC must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Forms_159/159.pdf. When completing the FCC Form 159, Holmes County Broadcasting Company, LLC 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): for WAGR-FM, 1341 (for FY 2013); 1541 (for FY 2015); 1641 (for FY 2016); 1741 (for FY 2017); 1841 (for FY 2018); 1941 (for FY 2019); 2041 (for FY 2020); 2241 (for FY 2022); and 2363 (for FY 2023); and for WXTN(AM), 1336 (for FY 2013); 1536 (for FY 2015); 1636 (for FY 2016); 1736 (for FY 2017); 1836 (for FY 2018); 1936 (for FY 2019); 2036 (for FY 2020); 2236 (for FY 2022); and 2336 (for FY 2023).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 of the Commission's rules.²⁵ 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. A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will assist in processing the response.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁶
 - 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

²⁴ <https://apps.fcc.gov/cores/userLogin.do>

²⁵ 47 CFR § 1.16.

²⁶ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Holmes County Broadcasting Company, LLC, c/o Kathy Lockett, 100 Radio Road, Lexington, MS 39095, and to its counsel, Allan G. Moskowitz, Esq., 10845 Tuckahoe Way, North Potomac, MD 20878.

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: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 24-806
August 14, 2024

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

PS Docket No. 23-237 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 12, 2024. Beginning at 10:00 am, the Region 21 800 MHz RPC meeting will convene at the Monitor Township Fire, 2483 Midland Road, Bay City, MI 48706.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – July 18, 2024 meeting
- Correspondence
- Review of Applications
 - Old Applications
 - New Applications
- 800 MHz Subcommittee Reports
 - Interoperable Communication Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Committee
- Old Business
 - Website
- New Business
- Next meeting: October 24, 2024 – Zehnder's - Frankenmuth
- 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 – July 18, 2024 meeting
- Correspondence
- Review of Applications
 - Old Applications

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).

- New Applications
- 700 MHz Subcommittee Reports
 - Interoperable Communications Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
 - Reminder – 2025 meeting dates/locations will be established at the next meeting. Bring your calendars, and consider hosting a meeting
- Next meeting: October 24, 2024 – Zehnder’s - Frankenmuth
- Adjourn

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

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

Keith M. Bradshaw
 Chair, Region 21 700 MHz and 800 MHz RPCs
 Oakland County Radio Communications Supervisor
 1200 N. telegraph Rd, building 16E
 Pontiac, MI 48341
 Ph: 248-452-9769
bradshawkm@oakgov.com

Greg Farrer
 Engineering Manager
 State of Michigan – DTMB – Center for Shared Solutions
 Michigan’s Public Safety Communications System
 MSP HQ, 2nd Floor, Wing A E7
 7150 Harris Drive
 Dimondale, MI 48821
 Mobile: 517-282-7885
FarrerG@michigan.gov

- 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 24-807
August 14, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 10 (GEORGIA) REGIONAL PLANNING COMMITTEES TO HOLD
700 MHZ AND 800 MHZ MEETINGS

PS Docket No. 23-237 and WT Docket 02-378

The Region 10 (Georgia) 700 MHz and 800 MHz Regional Planning Committees (RPCs)¹ will hold two consecutive planning meetings on Wednesday, November 13, 2024. Beginning at 10:00 am, the 700/800 MHz RPC will convene at the Georgia Public Safety Training Center, Room 108, 1000 Indian Springs Road, Forsyth, Georgia 31029. It is requested of all persons planning to attend the meeting, RSVP with your name, your agency, and number of attendees to: chairregion10rpc2021@gmail.com or vicechairregion10rpc2021@gmail.com. Please respond prior to 10/1/24.

The agenda for the 700 and 800 MHz meeting is as follows:

- Informal information sharing
- Welcome and Introduction of Officers
- Review and approval of minutes
- FCC Application process
- CAPRAD
- Old business
- New business
 - o 700 MHz Interop issues
 - o FCC Notice regarding licensing updates
- Standing Committee Reports (including technical committee)
- Discuss/vote on any needed proposed changes to Region 10's 700 and 800 MHz Plan
- FCC Regulatory Update
- Nomination and election of new RPC officers
- Schedule 2025 RPC meeting
- Adjourn

Both Region 10 RPC meetings are open to the public. All eligible public safety providers in Region 10 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. It is critical that agencies currently licensed to operate on the public safety 700 MHz or 800 MHz bands, or who are considering designing and building a 700 MHz or 800 MHz system must attend this meeting.

¹ The Region 10 700 MHz and 800 MHz Regional Planning Committees' area includes all 159 counties in the State of Georgia.

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 10 should plan to attend.

For further information, please contact:

Howell McKinnon
Chairperson, 700/800 MHz RPCs
Radio Systems Coordinator, Athens-Clarke County
3035 Lexington Rd
Athens, GA 30605
Phone: 706-613-3710
Mobile: 706-340-0314
chairregion10rpc2021@gmail.com

Mike Ward
Vice Chairperson
E911 Radio System Administrator
Cobb County Government
141 N. Marietta Parkway
Marietta, GA 30060
Phone: 770-499-4115
Mobile: 404-402-2231
vicechairregion10rpc2021@gmail.com

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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 24-808
Released: August 13, 2024

**THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE ACTIVATION OF
THE DISASTER INFORMATION REPORTING SYSTEM (DIRS)
AND THE MANDATORY DISASTER RESPONSE INITIATIVE (MDRI)
FOR COMMUNICATIONS IMPACTS FROM TROPICAL STORM ERNESTO IN PUERTO
RICO AND THE U.S. VIRGIN ISLANDS**

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), at the request of Puerto Rico and the U.S. Virgin Islands, and 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 Ernesto. DIRS is a web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, and satellite providers 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/dirs>. 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: **ERNESTO**. 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 Wednesday, August 14th 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.

**JURISDICTIONS OF INTEREST FOR THIS DIRS ACTIVATION INCLUDE THE
FOLLOWING:**

Puerto Rico

U.S. Virgin Islands

Further, as the result of a DIRS activation, the PSHSB hereby notifies the public of the activation of the Mandatory Disaster Response Initiative (MDRI).¹

JURISDICTIONS OF INTEREST FOR THIS MDRI ACTIVATION INCLUDE THE FOLLOWING:

Puerto Rico

U.S. Virgin Islands

Upon the release of this Public Notice, all facilities-based mobile wireless providers operating in the above-referenced areas are hereby notified and required to: (1) provide for reasonable roaming under disaster arrangements when technically feasible;² (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies;³ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁴

Facilities-based mobile wireless providers that serve the above-referenced areas and that have provided contact information in DIRS prior to Tropical Storm Ernesto will be individually notified that the MDRI has been activated in their area.

PSHSB will announce when the MDRI has been deactivated by subsequent Public Notice. Such Public Notice will also announce any deadlines for facilities-based mobile wireless providers to report the timing and effectiveness of their MDRI provisions to the Commission.⁵ Providers should familiarize themselves with the Commission's MDRI requirements.⁶

For more information on the FCC's response to Tropical Storm Ernesto, please go to <https://www.fcc.gov/Ernesto>.

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

For further information on DIRS, please contact:

Michael Caiafa (202) 418-1311, michael.caiafa@fcc.gov

John Healy (215) 847-8094, john.healy@fcc.gov

¹ Section 4.17(a)(2) authorizes the Chief of the Public Safety and Homeland Security Bureau to issue a Public Notice activating the MDRI in response an activation of the Disaster Information Reporting System. 47 CFR § 4.17(a)(2).

² See 47 CFR § 4.17(a)(3)(i) (detailing criteria for activating roaming under disaster arrangements).

³ See 47 CFR § 4.17(a)(3)(ii) (explaining what mutual aid arrangements must include).

⁴ 47 CFR § 4.17(a)(3)(i)-(v); see also FCC, *Wireless Network Resiliency During Disasters* (June 4, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

⁵ See 47 CFR § 4.17(c).

⁶ See generally 47 CFR § 4.17(a)(3)(i)-(v)..

David Ahn (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center (202) 418-1122, fccoperationcenter@fcc.gov

Details on the Mandatory Disaster Response Initiative can be found on the FCC website at <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

For further information concerning this MDRI activation, please contact:

Justin Cain, (202) 853-7365, (202) 418-2924, justin.cain@fcc.gov
Logan Bennett, (732) 425-5036, (202) 418-7790, logan.bennett@fcc.gov
FCC 24/7 Operations Center, (202) 418-1122, fccops@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-24-809

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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 ERNESTO

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 Ernesto. 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 Ernesto 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 Ernesto 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 Tropical Storm Ernesto 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 Ernesto 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

⁴ 47 CFR §§ 73.1250, 73.1680, 73.3542.

regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Space Bureau Guidance**
 - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to Tropical Storm Ernesto 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 Ernesto 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

⁵ 47 USC § 309(c)(2)(G).

- **Emergency Requests Pertaining to Numbering Resources:**
 - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
- **All Other Wireline Provider Requests:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireless Telecommunications Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Tropical Storm Ernesto 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-24-810

Released: August 13, 2024

THE FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO TROPICAL STORM ERNESTO

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 Ernesto.

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

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DA-24-811

Released: August 13, 2024

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY TROPICAL STORM ERNESTO

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 Ernesto.

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

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45 L Street NE
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DA-24-812

Released: August 13, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS IMPACTED BY TROPICAL STORM ERNESTO

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 Ernesto to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Tropical Storm Ernesto may cause widespread damage and significant impacts to communications services and infrastructure. 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 trees, replace damaged utility poles, and open roadways often result in significant, non-disaster 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 debris 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 (including trenching) 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: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 24-813

Released: August 13, 2024

FCC ANNOUNCES NEXT MEETING OF THE TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES ON SEPTEMBER 18, 2024

GN Docket No. 19-329

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,¹ the Federal Communications Commission (FCC or Commission) announces the next meeting of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Precision Ag Connectivity Task Force or Task Force). The meeting will be held **Wednesday, September 18, 2024, beginning at 3:00 p.m. EDT**. Notice of this meeting was published in the Federal Register.²

At this meeting, the Task Force will hear updates from Working Group leadership and discuss progress towards recommendations. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

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

Any questions that arise during the meeting should be sent to PrecisionAgTF@fcc.gov and will be answered at a later date. Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19-329.

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

² Federal Communications Commission, Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 89 Fed. Reg. 65624 (Aug. 12, 2024).

More information about the Precision Ag Connectivity Task Force is available at <https://www.fcc.gov/task-force-reviewing-connectivity-and-technology-needs-precision-agriculture-united-states>. You may also contact Emily Caditz, 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)
)
Federated Wireless Expedited Request for) GN Docket No. 15-319
Emergency Waiver of Citizens Broadband Radio)
Service Incumbent Protection Rules)

ORDER

Adopted: August 14, 2024

Released: August 14, 2024

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau), Mobility Division, conditionally grants Federated Wireless' (Federated 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 Federated requests that the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve them of the requirement for Environmental Sensing Capabilities (ESCs) 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 Ernesto, including DPAs PR 1-5 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Hurricane Ernesto made landfall as a Category 1 hurricane – in Puerto Rico and the U.S. Virgin Islands late Tuesday, August 13, 2024, bringing with it intense winds, heavy rainfall, and dangerous storm surge conditions.³ Tropical storm conditions are expected to continue over the Virgin Islands and Puerto Rico through Wednesday, August 14, 2024.⁴ 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.⁵ The Commission established the Citizens Broadband Radio Service and created a three-tiered access and

¹ See Federated Wireless Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed August 13, 2024) (Waiver Request), <https://www.fcc.gov/ecfs/document/108132075109408/1>; The White House, *President Joseph R. Biden, Jr. Approves Puerto Rico Emergency Declaration* (Aug. 13, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/08/13/president-joseph-r-biden-jr-approves-puerto-rico-emergency-declaration-2/>.

² 47 CFR § 96.67(c)(2)-(3).

³ See Waiver Request at 1; National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Ernesto Advisory 10, 11:00 PM AST Tue Aug 13, 2024, https://www.nhc.noaa.gov/graphics_at5.shtml?start#contents.

⁴ See *id.*

⁵ 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*).

authorization framework to accommodate shared federal and non-federal use of the band.⁶ 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. In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.⁷

3. Federated seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve it 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.⁸ This waiver would allow Federated 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 Ernesto. Federated seeks a waiver of these requirements in the interest of providing uninterrupted service to approximately 10,000 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 Ernesto.⁹

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."¹⁰ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.¹¹

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. Federated asserts that "the intense winds and rainfall could cause widespread power outages."¹² If such outages occur, the Impacted Systems will lose commercial power and will be unable to operate normally.¹³ Federated also asserts that the availability of backhaul may also be impacted.¹⁴ Federated contends that these power outages may cause DPAs in the affected areas to be activated, impacting approximately 10,000 CBSDs, potentially disconnecting millions of customers—including consumer, residential and enterprise customers, schools, and oil and gas companies—from critical broadband, voice, and data services.¹⁵ According to Federated,

⁶ *Id.*

⁷ 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).

⁸ 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).

⁹ See Waiver Request at 1-2.

¹⁰ 47 CFR § 1.925(b)(3).

¹¹ 47 CFR § 1.3.

¹² See Waiver Request at 1.

¹³ See *id.*

¹⁴ *Id.*

“[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.”¹⁶ 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 Beryl, Ian, and Fiona, Typhoon Mawar, and Tropical Storms Nicole, Idalia, and Debby,¹⁷ to allow the Federated SASs to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate their ESCs from the 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 SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either August 28, 2024, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Federated 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 Ernesto, 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 request 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

(Continued from previous page)

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ 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); *Google LLC’s Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 23-789 (rel. Aug. 30, 2023); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-652 (rel. July 8, 2024); *Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-677 (rel. July 12, 2024); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-777 (rel. Aug. 6, 2024).

(3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau



PUBLIC NOTICE

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

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

DA 24-816

Released: August 14, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES RELEASE OF THE REQUEST FOR INFORMATION / REQUEST FOR QUALIFICATION FOR THE LOCAL NUMBER PORTABILITY ADMINISTRATOR SELECTION PROCESS

WC Docket No. 23-337

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the release by North American Portability Management, LLC (NAPM)¹ of the Request for Information (RFI) and Request for Qualification (RFQ) for the Local Number Portability Administrator (LNPA) selection process. The RFI is intended to gather information primarily about potential beneficial changes that parties believe could be brought to LNPA operations – in particular, operations of the Number Portability Administration Center (NPAC), which is the local number portability (LNP) database. The RFQ seeks expressions of interest in serving as the LNPA, and collects basic qualification information for NAPM and the Bureau to consider in determining whether a party expressing interest is facially qualified to serve as the LNPA.

Responses to the RFI will inform development of the Request for Proposal (RFP) that NAPM will issue seeking formal bids from entities seeking to serve as the LNPA. Acceptance of the RFQ by NAPM will permit such party to advance to the step of the selection process in which it will respond to the RFP.

Interested parties may request access to the RFI and RFQ through NAPM's website, www.napmllc.org, starting on August 21, 2024, at 12:00 pm Eastern Daylight Time. The RFI and RFQ will be made available to parties that have established access on August 28, 2024, by 12:00 pm Eastern Daylight Time. Responses to the RFI and RFQ are due on October 10, 2024, at 12:00 pm Eastern Daylight Time. No party, including the current LNPA, will be eligible to submit a proposal in response to the RFP if that party did not submit a response to the RFQ by the deadline for responding to the RFQ.²

After reviewing the responses to the RFI and RFQ, NAPM will file with the Bureau recommendations regarding responses to the RFQ (along with all RFQ responses), which the Bureau will

¹ NAPM is an industry consortium generally open to all wireline (including interconnected Voice over Internet Protocol) and Commercial Mobile Radio Service providers that currently port numbers or state that they intend to port numbers within six months of admission. *Third Local Number Portability Administrator Selection Process*, WC Docket No. 23-337, Order, DA 24-104 at 1, para. 3 (WCB Feb. 6, 2024) (*LNPA Selection Process Order*). NAPM has served in this role since the inception of the LNPA and was the originator of all procurement documents (all subject to Commission approval), as well as the initial evaluator of competing bids, in the last selection process. *Id.* at 1-2, para. 3. We concluded in the *LNPA Selection Process Order* that NAPM, subject to full Commission oversight, should develop selection criteria and contractual documents governing the LNPA selection process for consideration by the Bureau. *Id.* at 3, para. 6. The Bureau approved an extension of the current contract until May 2031, with two potential option years. *LNPA Selection Process Order* at 6, para. 14.

² *LNPA Selection Process Order* at 4, n.20.

consider.³ Within four months of receiving the recommendations, the Bureau will direct NAPM to notify any parties that expressed interest that they have been determined either to be facially qualified or not facially qualified (and not permitted to participate further in the selection process).⁴ Further information regarding the LNPA selection process can be found in the *LNPA Selection Process Order* and *LNPA Selection Process Notice*.⁵

Contact Person. For further information about this proceeding, please contact Edward Krachmer, FCC Wireline Competition Bureau, Competition Policy Division, 45 L Street, N.E., Washington, DC 20554, 202-418-1525, Edward.Krachmer@fcc.gov.

³ See *Third Local Number Portability Administrator Selection Process*, WC Docket No. 23-337, Public Notice, DA 23-940, at 3 (WCB Oct. 10, 2023) (*LNPA Selection Process Notice*) adopted by *LNPA Selection Process Order* at 3, para. 7.

⁴ *Id.* The next phase of the selection process will be the release of the RFP. See *LNPA Selection Process Notice* at 4.

⁵ See *LNPA Selection Process Order*; *LNPA Selection Process Notice*.



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

August 14, 2024

DA 24-817

SMALL ENTITY COMPLIANCE GUIDE

Cybersecurity Labeling Program for Internet of Things (IoT) Products

FCC 24-26

PS Docket No. 23-239

Released March 14, 2024

In accordance with the requirements of 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 (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the 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)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

The *Cybersecurity Labeling for Internet of Things Report and Order and Further Notice of Proposed Rulemaking (Order)* adopts a voluntary cybersecurity labeling program for wireless Internet of Things (IoT) products. The Federal Communications Commission's (Commission or FCC) IoT Labeling Program (Labeling Program or Program) will provide consumers with an easy-to-understand and quickly recognizable FCC IoT Label that indicates the labeled product meets certain basic minimum cybersecurity requirements. The FCC IoT Label includes a U.S. government certification mark (Cyber Trust Mark) and a QR code that directs consumers to a registry with consumer-friendly information about the security of products bearing the Cyber Trust Mark. The Labeling Program will help consumers make better purchasing decisions, raise consumer confidence with regard to the cybersecurity of IoT products they buy to use in their homes, and encourage manufacturers to develop IoT products with security-by-design principles in mind.

While the IoT Labeling Program will be voluntary, those that choose to participate will be required to ensure their IoT products comply with the Commission's program requirements. These requirements are based on the National Institute of Standards and Technology (NIST) *Profile of the IoT Core Baseline for Consumer IoT Products* (NISTIR 8425). The *Order* focuses the program's scope on wireless consumer IoT products, which includes IoT devices and additional product components necessary to use the IoT product beyond basic operational features, such as a smart speaker or doorbell and the applications used to control them. The Program also focuses on Internet-connected products capable of intentionally emitting radiofrequency energy, relying on the Commission's core Title III authority. Under the oversight of the Commission, qualified Cybersecurity Labeling Administrators (CLAs), including a Lead Administrator selected by the Commission, will be responsible for accepting, reviewing, and approving applications and supporting documentation submitted by entities (e.g., manufacturers) seeking authorization to use the FCC IoT Label. Each application will be supported by testing conducted by an accredited and recognized lab demonstrating the product complies with the Commission's IoT Labeling Program requirements.

The Commission anticipates that as the IoT Labeling Program becomes established in the minds of the consumer, small entities may benefit from recognition of the Cyber Trust Mark on their IoT products, and thus, receive greater recognition in the market as a result of participating in the Program. The Commission adopted a single binary label as proposed in the IoT Labeling NPRM in part due to its simplicity to consumers, but also because small businesses will benefit from a less complex, and likely less costly, labeling design on their product packaging. As noted, the Program is voluntary, and thus, choosing not to participate means that a small business is not obligated to follow any of the associated rules required for Program participants. In adopting this Program, the Commission furthered its goal of providing consumers with reliable information that the IoT products they buy and bring into their homes meet the minimum cybersecurity standards of the Labeling Program, which will strengthen the security of their home products, and the chain of connected IoT products across the larger national IoT ecosystem.

II. COMPLIANCE REQUIREMENTS

The *Order* amends subchapter A of the Commission's rules, establishing a labeling program for consumer IoT products. The rules cover the Program's general provisions, application procedures, authorization conditions, Cybersecurity Label Administrators' requirements and responsibilities, and the IoT registry. A summary of the relevant rules is described below.

A. General Provisions (47 CFR §§ 8.201 – 8.207)

The basis and purpose of the Labeling Program for IoT products is to elevate the nation's cybersecurity posture and provide consumers with assurances regarding their baseline cybersecurity.¹ The Commission adopted definitions relevant to the scope and elements of the Labeling Program,² and excluded from the Program all communications equipment on the FCC's Covered List,³ the Department of Commerce's Entity List,⁴ the Department of Defense's List of Chinese Military Companies,⁵ and those ineligible for federal procurements or financial awards pursuant to the General Service Administration's System for Award Management.⁶ All consumer IoT products produced by these excluded sources are prohibited from obtaining use of the FCC IoT Label. Medical devices regulated by the U.S. Food and Drug Administration, and motor vehicles and motor vehicle equipment regulated by the National Highway Traffic Safety Administration are also excluded from the Program's definition of "Consumer IoT Products."⁷

B. Application Procedures for IoT Product Authorizations (47 CFR §§ 8.208 – 8.212)

1. Applications to certify that a Consumer IoT Product is compliant with the Labeling Program must be signed by the applicant or their authorized agent, and must be submitted in writing to a CLA in the form and format described by the Commission in a public notice to be released by the Public Safety and Homeland Security Bureau (PSHSB or Bureau).

2. Applicants, or their authorized agents, are required to submit an application accompanied by the following information:

- a. A written and signed declaration to the CLA that all statements made in the application are true and correct to the best of the applicant's knowledge and belief.
- b. A declaration under penalty of perjury that:
 - i. the Consumer IoT Product for which the applicant is applying for the FCC IoT Label meets all the requirements of the IoT Labeling Program;
 - ii. the applicant is not identified as an entity producing covered communications equipment on the Covered List, established pursuant to 47 CFR § 1.50002;
 - iii. the product is not comprised of "covered" equipment on the Covered List;

¹ 47 CFR § 8.202.

² 47 CFR § 8.203.

³ 47 CFR § 8.204(a); *Cybersecurity Labeling Program for Internet of Things*, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-26, at 21, para. 35 (*IoT Labeling Order*). See FCC, *List of Equipment and Services Covered By Section 2 of The Secure Networks Act* (Oct. 6, 2023), <https://www.fcc.gov/supplychain/coveredlist> [https://perma.cc/7EJ4-SDCE].

⁴ 47 CFR § 8.204(d); *IoT Labeling Order* at 21, para. 35. See Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> [https://perma.cc/STW5-B8GW].

⁵ 47 CFR § 8.204(d); *IoT Labeling Order* at 21, para. 35. See U.S. Department of Defense, 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 (2022), <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF> [https://perma.cc/SLMA-LZLG].

⁶ 47 CFR § 8.204(e); *IoT Labeling Order* at 21, para. 35. See U.S. General Services Administration System for Award Management, *Exclusion Types*, <https://sam.gov/content/entity-information/resources/exclusion-types> [https://perma.cc/5L45-LKCJ] (last visited Feb. 15, 2024).

⁷ 47 CFR § 8.203(b); *IoT Labeling Order* at 18-19, para. 32.

- iv. the product is not produced by any entity, its affiliates, or subsidiaries identified on the Department of Commerce's Entity List, 15 CFR part 744, supplement no. 4, and/or the Department of Defense's List of Chinese Military Companies, <http://media.defense.gov/202/Oct/05/2003091660/-1/-1/0/1260H%20COMPANIES.PDF>;
 - v. the product is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management as described in § 8.204;
 - vi. the applicant has taken every reasonable measure to create a securable product;
 - vii. the applicant will, until the support period end date disclosed in the IoT registry, diligently identify critical vulnerabilities in our products and promptly issue software updates correcting them, unless such updates are not reasonably needed to protect against security failures; and
 - viii. the applicant will not elsewhere disclaim or otherwise attempt to limit the substantive or procedural enforceability of this declaration or of any other representations and commitments made on the FCC IoT Label or made for purposes of acquiring or maintaining authorization to use it.
- c. Technical test data signed by the person who performed or supervised the tests, attesting to the accuracy of such data. The CLA may require the person signing the test data to submit a statement showing that they are qualified to make or supervise the required measurements.

3. Applicants must also provide a written attestation that they have designated an agent located in the United States (or themselves, if located in the United States) for the purpose of accepting notice of process on behalf of the applicant.

4. A CLA will grant an application to use the FCC IoT Label only if it finds the application is complete, including required test reports, and the Consumer IoT Product complies with the program requirements. Otherwise, an application will be denied.

5. Applications may be dismissed if they are not in accordance with the Commission's rules, the applicant fails to submit additional documents or information upon request, or upon receipt of a written and signed request for dismissal by the applicant or their agent.

6. Any party aggrieved by an action taken by a CLA must first seek review from the CLA within 60 days from the date the CLA issues its decision, and then may seek review from the Commission within 60 days of the CLA's decision on the initial review.

7. A party seeking review of a CLA decision is not authorized to use the FCC IoT Label until the Commission issues a final decision authorizing that use.

C. Authorization Conditions (47 CFR §§ 8.213 – 8.216)

1. A grant of authorization to use the FCC IoT Label remains effective until set aside, revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

2. Using or making reference to the FCC IoT Label or the Cyber Trust Mark in a deceptive or misleading manner in any advertising, brochure, etc. is prohibited.

3. A grantee authorized to use the FCC IoT Label may be required to investigate and respond to complaints received by the Commission concerning their product's potential noncompliance within 20 days.

- a. A report submitted in response to such a complaint should also indicate the results of the investigation and what action, if any, has been taken or will be taken to correct the identified defect.
- b. In the absence of adequate correction of identified deficiencies, a grantee's authorization to use the FCC IoT will be terminated.

D. CyberLABs (47 CFR §§ 8.217 – 8.218)

1. Applicants seeking a grant of authorization to use the FCC IoT Label must include a compliance test report generated by an accredited and Lead Administrator-recognized testing lab. This can be a third-party lab, an applicant's in-house testing lab, or a CLA-run lab. Third-party labs are referred to as "CyberLABs," and they must demonstrate the following requirements to be recognized by the Lead Administrator:

- a. Technical expertise in cybersecurity testing and conformity assessment of IoT devices and products;
- b. Compliance with accreditation requirements based on the International Organization for Standardization/International Electrotechnical Commission International Standard ISO/IEC 17025;
- c. Knowledge of FCC rules and procedures associated with product compliance testing and cybersecurity certification;
- d. Necessary equipment, facilities, and personnel to conduct cybersecurity testing and conformity assessment of IoT devices and products;
- e. Documented procedures for conformity assessment;
- f. Implementation of controls to eliminate potential conflicts of interests, particularly with regard to commercially sensitive information;
- g. That the CyberLAB, its affiliates, or subsidiaries are not organizations identified by the listed sources of prohibition under § 8.203; and
- h. That it has certified the truth and accuracy of all information it has submitted to support its accreditation.

2. Parties wishing to be recognized by PSHSB as laboratory accreditation bodies must submit a written request to the Chief of PSHSB and provide the following information as evidence of their qualifications:

- a. Successful completion of an ISO/IEC 17011 peer review, such as being a signatory to an accreditation agreement that is acceptable to the Commission;
- b. Experience with the accreditation of radio and telecommunications testing laboratories to ISO/IEC 17025;
- c. Accreditation personnel/assessors with specific technical experience on the Commission cybersecurity certification rules and requirements; and
- d. Procedures and policies developed for the accreditation of testing laboratories for FCC cybersecurity certification programs.

3. For a CyberLAB to be recognized by the Lead Administrator, it must be accredited with a scope covering the measurements required for the types of IoT products that it will test, and an accreditation body must submit the following information to the Lead Administrator on its behalf:

- a. Laboratory name, location of test site(s), mailing address and contact information;
- b. Name of accrediting organization;
- c. Scope of laboratory accreditation;
- d. Date of expiration of accreditation;
- e. Designation number;
- f. FCC Registration Number (FRN);
- g. A statement as to whether or not the laboratory performs testing on a contract basis;
- h. For laboratories outside the United States, details of the arrangement under which the accreditation of the laboratory is recognized; and
- i. Other information as requested by the Commission.

E. Cybersecurity Label Administrators (47 CFR §§ 8.219 – 8.221)

- 1. CLAs will have the following responsibilities, subject to Commission review:
 - a. Receive and evaluate applications and supporting data for authority to use the FCC IoT Label;
 - b. Grant authorization to use the FCC IoT Label with a complying consumer IoT product in accordance with the Commission's rules and policies;
 - c. Accept test data from any Lead Administrator-recognized accredited CyberLAB, subject to the requirements in ISO/IEC 17065, and not unnecessarily repeat tests;
 - d. Establish and assess fees for processing applications and other Commission-required tasks;
 - e. Only act on applications that it has received or which it has issued a certification authorizing use of the FCC IoT Label;
 - f. Dismiss an application that is not in accordance with the provisions adopted, when the applicant requests dismissal, or if the applicant does not submit additional information or test samples requested by the CLA;
 - g. Ensure that manufacturers make all required information accessible to the IoT registry;
 - h. Participate in a consumer education campaign in coordination with the Lead Administrator; and
 - i. Receive complaints alleging an IoT product does not support the cybersecurity criteria conveyed by the Cyber Trust Mark, and refer these complaints to the Lead Administrator, which will notify PSHSB.
- 2. Additional CLA Responsibilities
 - a. CLAs will also be responsible for performing appropriate post-market surveillance activities, based on type testing a certain number of samples of the total number of product types for which the CLA has certified use of the FCC IoT Label, and submitting periodic reports of their findings to the Commission;
 - b. If, during post market surveillance, a CLA determines that a product fails to comply with

the technical regulations or other FCC requirements for that product, the CLA shall immediately notify the grantee and the Commission in writing, and the grantee will be required to provide a report to the CLA describing the actions taken to correct the situation, as provided in § 8.216. The CLA must provide a report of these actions to the Commission within 30 days; and

- c. CLAs may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress; grant a waiver of the rules; or take enforcement actions.
- d. CLAs may use internal or external (outsourced) resources for evaluation (the selection of applicable requirements and the determination that those requirements are met), but CLAs are prohibited from outsourcing review or application decision activities.
- e. When external resources are used for evaluation, including to test products subject to labeling, the CLA shall be responsible for the evaluation and shall maintain appropriate oversight, including periodic audits, of the external resources used to ensure its reliability.

3. CLA Applicants

- a. Accredited third parties wishing to become a CLA must file a written application with the Commission which includes:
 - i. a description of its organization structure,
 - ii. an explanation of how it will avoid personal and organizational conflict when processing applications,
 - iii. a description of its processes for evaluating applications seeking authority to use the FCC IoT Label, and
 - iv. a demonstration of expertise that will be necessary to effectively serve as a CLA including, but not limited to:
 - a) Cybersecurity expertise and capabilities in addition to industry knowledge of IoT and IoT labeling requirements;
 - b) Expert knowledge of NIST's cybersecurity guidance, including but not limited to NIST's recommended criteria and labeling program approaches for cybersecurity labeling of Consumer IoT Products;
 - c) Expert knowledge of FCC rules and procedures associated with product compliance testing and certification;
 - d) Knowledge of Federal law and guidance governing the security and privacy of agency information systems;
 - e) Ability to securely handle large volumes of information and demonstration of internal security practices;
 - f) The CLA applicant must also demonstrate that it is not owned or controlled by or affiliated with any entity identified on the Commission's Covered List or any other listed sources of prohibition under § 8.204; and
 - g) Implementation of controls to eliminate actual or potential conflicts of interests (including both personal and organizational), particularly with regard to commercially sensitive information.

4. Conditional Commission Approval

- a. To expedite initial deployment of the Labeling Program, the Commission will accept and

conditionally approve applications from entities seeking to be designated as a CLA provided they commit to obtain accreditation pursuant to all the requirements associated with ISO/IEC 17065 with the appropriate scope within six (6) months of when adopted standards and testing procedures become effective and otherwise meet the FCC's IoT Labeling Program requirements.

5. Withdrawal of Commission Approval

- a. The Commission will withdraw its approval of a CLA if the CLA's designation or accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the approval, or upon request of the CLA.
- b. The Commission will also limit the scope of products that can be certified by a CLA if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so.
- c. The Commission will notify a CLA in writing of its intention to withdraw or limit the scope of the CLA's approval and provide at least 60 days for the CLA to respond with an explanation and correction of identified deficiencies.
- d. PSHSB will provide notice to the CLA that it proposes to terminate the CLA's authority and provide the CLA up to 20 days to respond before reaching a final decision.
- e. If the Commission withdraws its recognition of a CLA, all grants issued by that CLA will remain valid unless specifically set aside or revoked by the Commission.

6. Lead CLA Responsibilities

- a. If more than one qualified entity is selected to be a CLA, the Commission will select a Lead Administrator which will have the following responsibilities, in addition to those required for all CLAs:
 - i. Interface with the Commission on behalf of the CLAs, including but not limited to submitting to PSHSB all complaints alleging a product bearing the FCC IoT Label does not meet the requirements of the Commission's Labeling Program;
 - ii. Coordinate with CLAs and moderate stakeholder meetings;
 - iii. Accept, review, and approve or deny applications from CyberLABs, and maintain a publicly available list of recognized labs, as well as a list of labs that have lost their recognition;
 - iv. Within 45 days of publication of updates or changes to NIST guidelines, or adoption by NIST of new guidelines, recommend in collaboration with CLAs and other stakeholders any appropriate modifications to the Labeling Program standards and testing procedures to stay aligned with the NIST guidelines;
 - v. Submit to the Commission reports on CLAs' post-market surveillance activities and findings in the format and by the date specified by PSHSB;
 - vi. Develop in collaboration with stakeholders a consumer education campaign, submit the plan to the Bureau, and participate in consumer education;
 - vii. Receive complaints about the Labeling Program, including but not limited to consumer complaints about the IoT registry, and coordinate with manufacturers to resolve any technical problems associated with consumers accessing the information in the IoT registry;
 - viii. Facilitate coordination between CLAs; and

- ix. Submit to the Commission any other reports upon request of the Commission or as required by Commission rule.

7. Additional Lead CLA Responsibilities

- a. Within 90 days of selection as Lead Administrator, the Lead Administrator will also, in collaboration with stakeholders (e.g. cyber experts from industry, government, and academia), submit the following to PSHSB:
 - i. Recommendations identifying and/or developing the technical standards and testing procedures for the Commission to consider with regard to at least one class of IoT products eligible for the IoT Labeling Program;
 - ii. Recommendations on how often a given class of IoT products must renew their request for authority to bear the FCC IoT Label, which may be dependent on the type of product, in connection with the relevant standards recommendations for an IoT product or class of IoT products;
 - iii. Recommendations on procedures for post-market surveillance by CLAs;
 - iv. Recommendations to PSHSB with regard to updates to the IoT registry including whether the IoT registry should be in additional languages, and if so, to recommend specific languages for inclusion; and
 - v. Recommendations on the design of the FCC IoT Label, including but not limited to labeling design and placement (e.g., size and white spaces, product packaging) and whether to include the product support end date on labels for certain products or category of products.

F. IoT Registry (47 CFR § 8.222)

The *Order* establishes a dynamic, decentralized, publicly accessible registry to be built through a common Application Programming Interface (API) that is secure by design.

1. Grantees authorized to use the FCC IoT Label must make the following information available on the IoT registry:

- a. Product Name;
- b. Manufacturer name;
- c. Date the product received authorization (i.e., cybersecurity certification) to affix the label and current status of the authorization (if applicable);
- d. Name and contact information of the CLA that authorized use of the FCC IoT Label;
- e. Name of the lab that conducted the conformity testing;
- f. Instructions on how to change the default password (specifically state if the default password cannot be changed);
- g. Information (or link) for additional information on how to configure the device securely;
- h. Information as to whether software updates and patches are automatic and how to access security updates/patches if they are not automatic;
- i. The date until which the entity promises to diligently identify critical vulnerabilities in the product and promptly issue software updates correcting them, unless such an update is not reasonably needed to protect against cybersecurity failures (i.e. the minimum support period); alternatively, a statement that the device is unsupported and that the purchaser should not rely on the manufacturer to release security updates;

- j. Disclosure of whether the manufacturer maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM); and
- k. Additional data elements that the Bureau deems necessary.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Order* contains new information collection requirements for manufacturers of consumer IoT products seeking authorization to use the FCC IoT Label. Applicants are required to have their product tested by an accredited and FCC-recognized CyberLAB, Label Administrator Lab, or manufacturer's in-house lab; obtain a report of conformity and compliance from the testing lab; and submit an application for authority to use the Cyber Trust Mark to an FCC-recognized Label Administrator in accordance with procedures established by the Label Administrator. The details and specifics of the reporting and recordkeeping are discussed in Section II of this Guide under the Compliance Requirements.

Additional recordkeeping obligations for Grantees authorized to use the FCC IoT Label require retention of the following records for a two-year period after the marketing of the associated product has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the grantee is officially notified that an investigation or any other administrative proceeding involving its product has been instituted:

1. A record of the original design and specifications and all changes that have been made to the complying consumer IoT product that may affect compliance with the standards and testing procedures established in the Commission's rules;
2. A record of the procedures used for production inspection and testing to ensure conformance with the standards and testing procedures established in the Commission's rules; and
3. A record of the test results that demonstrate compliance with the appropriate regulations for the Labeling Program.

IV. IMPLEMENTATION DATE

The *Order* shall become effective August 29, 2024, except for the amendments to 47 CFR §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, and 8.222, which will not become effective until September 9, 2024. OMB completed necessary review under the Paperwork Reduction Act and approved the information collection associated with these rules on July 30, 2024 (OMB Control Number 3060-1328).⁸

⁸ Federal Communications Commission, *Cybersecurity Labeling for Internet of Things*, 89 Fed. Reg. 65224 (August 9, 2024).

V. INTERNET LINKS

A copy of the *Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf>.

A copy of the *Order* Erratum is available at: https://docs.fcc.gov/public/attachments/DOC-404300A1_Erratum.docx.

A copy of the Federal Register Summary of the *Order* is available at: <https://www.federalregister.gov/documents/2024/07/30/2024-14148/cybersecurity-labeling-for-internet-of-things>.



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 24-818

Released: August 14, 2024

**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON ARVIG AND BEVCOMM
FILING THAT ENHANCED A-CAM SUPPORT OFFERS WERE INCORRECT BECAUSE
MIDCO WAS CLASSIFIED AS AN UNSUBSIDIZED COMPETITOR**

WC Docket No. 10-90

Comments Due: September 13, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on the filing submitted by Arvig Enterprises, Inc. (Arvig) and Rural Communications Holding Corporation (BEVCOMM),¹ which claimed that those companies' Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) support offers were incorrectly calculated because Midcontinent Communications (Midco) was incorrectly classified as an unsubsidized competitor offering voice service.²

Background. On August 30, 2023, the Bureau released a Public Notice announcing offers of Enhanced A-CAM support.³ That Public Notice also announced that while there would not be a wholesale challenge process for these offers, interested parties could file comments "regarding whether particular unsubsidized competitors may not be providing the minimum amount of usage set forth in the Urban Rate Survey or whether unsubsidized competitors may not be providing standalone voice service."⁴

In accordance with that Public Notice, Arvig and BEVCOMM submitted comments claiming that Midco does not provide standalone voice service in their Enhanced A-CAM service area. In the comments, Arvig estimates that because Midco was treated as an unsubsidized competitor, and the areas where Midco serves were correspondingly deemed ineligible for Enhanced A-CAM support, Arvig's Enhanced A-CAM offer was reduced by 1,765 locations, which corresponds to a drop of \$1,297,015 in annual support.⁵ For the same reason, BEVCOMM states that its offer in Minnesota was reduced by 1,753 locations, which corresponds to a drop of \$1,532,512 in annual support.⁶ We seek comment on Arvig's and BEVCOMM's assertions. We encourage interested parties that have relevant information to first reach out to the providers involved in this matter before filing comments with the Commission.

¹ Comments of Arvig Enterprises, Inc. (Arvig) and Rural Communications Holding Corporation (BEVCOMM), WC Docket No. 10-90 (filed Jul. 16, 2024) (Arvig Comments).

² *Id.* at 2.

³ *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, Public Notice, 38 FCC Rcd 7828 (2023).

⁴ *Id.* at 7835.

⁵ Arvig Comments at 2-3.

⁶ Arvig Comments at 2-3.

Filing Requirements. Interested parties may file comments on or before **September 13, 2024**. All filings should refer to WC Docket Nos. 10-90, Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).⁷

- *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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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.

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.⁸ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's ex parte rules.

⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁸ See 47 CFR §§ 1.1200(a), 1.1206.

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.



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 24-819

Released: August 14, 2024

SPACE BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU CORRECT REPLY COMMENT DEADLINE ON RECENT PUBLIC NOTICE

GN Docket No. 23-135; ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061

Comments/Objections/Petitions Due: August 12, 2024

Response to Comments/Objections/Oppositions to Petitions Due: August 22, 2024

Replies to Responses/Oppositions Due: August 29, 2024

The Space Bureau and Wireless Telecommunications Bureau (together, the Bureaus) issued a Public Notice in April 2023, seeking comment on filings by Space Explorations Holdings, LLC (SpaceX) and T-Mobile USA Inc. (T-Mobile).¹ On July 12, 2024, the Space Bureau issued a Public Notice seeking comment on SpaceX's amendment to those filings, as well as SpaceX's request to modify a separate license, which was posted in the GN Docket No. 23-135 on July 16, 2024.² On July 26, 2024, the Bureaus issued a Public Notice (July 26 Public Notice) clarifying the filing procedures for the July 12 Public Notice.³

In this Public Notice, the Bureaus correct the deadline for filing Replies to Responses/Oppositions in the July 12 Public Notice to **August 29, 2024**. The July 26 Public Notice incorrectly listed the deadline as August 27, 2024.⁴

Filing Requirements. 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).

- *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.

¹ *Space Bureau and Wireless Telecommunications Bureau Seek Comment on Filings of SpaceX and T-Mobile Requesting to Establish Supplemental Coverage from Space; Space Exploration Holdings, LLC Application Accepted for Filing*, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021, Public Notice, DA 23-338 (WTB/SB Apr. 28, 2023).

² *Satellite Licensing Division and Satellite Programs and Policy Division Information Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01836 (SB Jul 12, 2024) (July 12 Public Notice), available at <https://www.fcc.gov/document/space-station-applications-accepted-filing-29>.

³ *Space Bureau and Wireless Telecommunications Bureau Clarify Filing Procedures for Recent Public Notice*, GN Docket No. 23-135, ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061, Public Notice, DA 24-726 (WTB/SB Jul. 26, 2024).

⁴ See *id.* at 1.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent 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).

Ex Parte Rules. These proceedings, GN 23-135 and ICFS File Nos. SAT-MOD-20230207-00021 and SAT-AMD-20240322-00061, shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information regarding this proceeding, please contact Stephanie Neville of the Space Bureau, at stephanie.neville@fcc.gov or Alice Koethe of the Mobility Division, Wireless Telecommunications Bureau, at alice.koethe@fcc.gov.

- FCC -

⁵ 47 CFR §1.1200 *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. 24-820

Report No. TEL-02387

Thursday August 15, 2024

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).

On August 23, 2023, Searchlight WCM Holdco, LLC (SCP Holdco or Petitioner) filed a petition for a declaratory ruling, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4) (the Act) and section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), asking the Commission to find that it would serve the public interest to permit foreign ownership of SCP Holdco, the proposed controlling U.S. parent of Wecom LLC, the Licensee, to exceed the 25% benchmarks in section 310(b) of the Act. On October 12, 2023, the Petitioner filed an amended and restated petition for a declaratory ruling (Restated Petition). The Petitioner filed supplements on May 30, 2024; June 5, 2024; and August 5, 2024, updating the ownership information. The Restated Petition was filed in connection with the transfer of control of 13 common carrier wireless licenses (the Licenses) held by Wecom LicenseCo LLC (Wecom LicenseCo) to Wecom LLC.

Wecom LicenseCo, a Delaware limited liability company, is a wholly owned subsidiary of Wecom Newco, Inc. (Wecom Newco). Pursuant to an equity purchase agreement dated as of May 12, 2023, SCP Holdco will acquire 100% of the interests in Wecom LicenseCo from Wecom Newco, and then merge Wecom LicenseCo with and into Wecom LLC, with Wecom LLC being the surviving entity (the Transaction). As a result of the Transaction, the Licenses will be assigned from Wecom LicenseCo to Wecom LLC.

Upon consummation of the Transaction, Wecom LLC will be wholly owned by SCP Holdco, which in turn will be wholly owned by Searchlight WCM Topco, LLC (Searchlight Topco), all Delaware limited liability companies. Searchlight Topco will be owned by Searchlight Fiber Alliance, LLC (77.83% equity, 66.67% voting), Simple Broadband II LLC (17.65% equity, 16.67% voting), and Wecom Newco, Inc. (4.52% equity, 16.67% voting), all Delaware entities. Searchlight Fiber Alliance 2022 GP, L.P. holds 6.51% equity and 100% voting interests in Searchlight Fiber Alliance, LLC, both Delaware entities.

Searchlight Fiber Alliance 2022 GP, L.P. is wholly owned by its general partner, Searchlight Fiber Alliance 2022 GP, LLC, a Delaware limited liability company. Searchlight Fiber Alliance 2022 GP, LLC is owned by: Eric Zinterhofer, a U.S. citizen; Erol Uzumeri, a citizen of Canada; and Oliver Haarmann, a citizen of Germany, each holding 33.33% equity and voting interests. Searchlight Capital Partners, L.P. provides management services to Searchlight Fiber Alliance, LLC and its managing member, Searchlight Fiber Alliance 2022 GP, L.P., all Delaware entities. Searchlight Capital Partners, L.P. is controlled by Searchlight Capital Partners, LLC, its general partner, a Delaware limited liability company, which owns 33.33% equity and voting interests in Searchlight Capital Partners, L.P. Searchlight Capital Partners, LLC is controlled by its three members, Eric Zinterhofer, Erol Uzumeri, and Oliver Haarmann, who respectively own 33.33% equity and voting interest in Searchlight Capital Partners, LLC.

The remaining interests in Searchlight Fiber Alliance, LLC are held by Platinum Compass B 2018 RSC Limited, a United Arab Emirates corporation (46.74% equity, 0% voting) and Epsom Investment Pte. Ltd., a Singaporean private limited company (46.74% equity, 0% voting). Platinum Compass B 2018 RSC Limited is wholly owned by Abu Dhabi Investment Authority, a United Arab Emirates governmental authority. Epsom Investment Pte. Ltd. is wholly owned by GIC Infra Holdings Pte. Ltd., a Singapore private limited company, which in turn is wholly owned by GIC (Ventures) Pte. Ltd., a Singapore private limited company, which in turn is wholly owned by the Minister for Finance of the Government of Singapore. The Petitioner asserts that Platinum Compass B 2018 RSC Limited and Epsom Investment Pte. Ltd. are both insulated pursuant to section 1.5003 of the Commission's rules. 47 CFR § 1.5003.

The direct interest holders in Simple Broadband II LLC are: Simple Broadband LLC, a Delaware limited liability company, (0% equity, 100% voting); Simple Networks LLC, a New York limited liability company (2.50% equity, 0% voting); Jeff Libshutz (2% equity, 0% voting); Lee Chaikin (0.50% equity, 0% voting); and No Fall LLC, a Wyoming limited liability company (95% equity, 0% voting), all U.S. individuals and entities. The interests in No Fall LLC are held by: Fortress D Trust (25% equity, 0% voting); The Ian M. Cumming Charitable Lead Annuity Trust (70.88% equity, 0% voting); Jackson Management Services, L.C. (0% equity, 100% voting), all Wyoming entities, along with Matthew Ireland (1.25% equity, 0% voting); Catherine Handley (0.63% equity and 0% voting); Colby Rollins (1.25% equity, 0% voting); Patrick Egbert (0.25% equity, 0% voting); and Jason Stowell (0.75% equity, 0% voting), all U.S. citizens. The Fortress D Trust and Ian M. Cumming Charitable Lead Annuity Trust are wholly owned by the trustee, Cumming Trust Management Corporation, a Wyoming corporation. The following individuals, each of whom are U.S. citizens, are board members of the Cumming Trust Management Corporation: John Cumming, David Cumming, Catherine Handley, Jessica Grant, and Paul Rowsey. Matthew Ireland, Catherine Handley, and Colby Rollins are managers of Jackson Management Services, L.C. and respectively own 0% equity and 33.33% voting interests.

Simple Networks LLC, which holds 50% equity and 50% voting interests in Simple Broadband LLC, is owned by two U.S. citizens: Evan Grayer and Jason Markham, which respectively own 50% equity and 50% voting. ArmaVir Partners LLC, a Delaware limited liability company, holds the remaining 50% equity and 50% voting interests in Simple Broadband LLC. Two U.S. citizens, Jeff Libshutz (80% equity, 50% voting) and Lee Chaikin (20% equity, 50% voting), hold the interests in ArmaVir Partners LLC.

Wecom Newco is owned by Paul and Noelle Fleming (51% equity and voting) and Tanner Trahan (12% equity and voting), all of whom are U.S. citizens, along with Trahan Family Revocable Trust (37% equity and voting), a trust organized under the laws of Arizona. The Trahan Family Revocable Trust is wholly owned by its trustees, Jack and Terrie Trahan, both U.S. citizens.

According to the Restated Petition, upon consummation of the Transaction, the aggregate foreign ownership of SCP Holdco will be approximately 70.61% equity and 66.67% voting interests. Pursuant to section 1.5001(i) of the Commission's rules, 47 CFR § 1.5001(i), the Petitioner requests that the Commission specifically approve the direct and/or indirect foreign equity and/or voting interests that would be held in SCP Holdco, the proposed controlling U.S. parent of Wecom LLC, upon completion of the Transaction, as follows:

Erol Uzumeri (1.69% equity, 22.22% voting) (Canada);
 Oliver Haarmann (1.69% equity, 22.22% voting) (Germany);
 Platinum Compass B 2018 RSC Limited (36.38% equity, 36.38% voting) (United Arab Emirates);
 Abu Dhabi Investment Authority (36.38% equity, 36.38% voting) (United Arab Emirates);
 Epsom Investment Pte. Ltd. (36.38% equity, 36.38% voting) (Singapore);
 GIC Infra Holdings Pte. Ltd. (36.38% equity, 36.38% voting) (Singapore);
 GIC (Ventures) Pte. Ltd. (36.38% equity, 36.38% voting) (Singapore); and

Minister for Finance of the Government of Singapore (36.38% equity, 36.38% voting) (Singapore).

Pursuant to section 1.5001(k) of the Commission's rules, 47 CFR § 1.5001(k), Petitioner also requests advance approval for the following foreign individuals and foreign-organized entities to acquire up to a non-controlling 49.99% indirect equity and/or voting interest in SCP Holdco:

Erol Uzumeri (49.99% equity and voting) (Canada);
Oliver Haarmann (49.99% equity and voting) (Germany);
Platinum Compass B 2018 RSC Limited (49.99% equity and voting) (United Arab Emirates);
Abu Dhabi Investment Authority (49.99% equity and voting) (United Arab Emirates);
Epsom Investment Pte. Ltd. (49.99% equity and voting) (Singapore);
GIC Infra Holdings Pte. Ltd. (49.99% equity and voting) (Singapore);
GIC (Ventures) Pte. Ltd. (49.99% equity and voting) (Singapore); and
Minister for Finance of the Government of Singapore (49.99% equity and voting) (Singapore).

The Petitioner asserts that the public interest would be served by granting the Restated Petition.

National Security, Law Enforcement, Foreign Policy and Trade Policy Review

Pursuant to Commission practice, the Restated Petition was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Petitioner. On August 9, 2024, 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), filed a Petition to Adopt Conditions to Authorizations and Licenses (Committee Petition). The Committee advises that it has no objection to a grant of the Restated Petition, provided that the Commission conditions its approval on the assurances of Searchlight WCM Holdco, LLC and Wecom LLC to abide by the commitments and undertakings set forth in the July 24, 2024, Letter of Agreement from Nadir Nurmohamed, Searchlight WCM Holdco, LLC, and Paul Fleming Wecom 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, U.S. Department of Justice National Security Division (July 24, 2024 LOA). The Committee Petition and the July 24, 2024 LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for ISP-PDR-20230823-00008 and accessing "Other filings related to this application" from the Document Viewing area.

Foreign Ownership Declaratory Ruling.

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

This declaratory ruling authorizes 100% aggregate foreign ownership of SCP Holdco, as the proposed controlling U.S. parent of Wecom, LLC, 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 SCP Holdco exceeds the terms and conditions of this declaratory ruling. 47 CFR § 1.5004. Specifically, pursuant to section 1.5001(i) of the Commission's rules, we grant the Petitioner's request for specific approval to permit the above-listed foreign individuals and foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in SCP Holdco, the proposed controlling U.S. parent of Wecom, LLC, in the amounts specified above.

We also grant, pursuant to section 1.5001(k)(2) of the Commission's rules, the Petitioner's advance approval request to permit the above-listed foreign individuals and foreign-organized entities to acquire up to a non-controlling 49.99% indirect equity and/or voting interest in SCP Holdco, the proposed controlling U.S. parent of Wecom, LLC.

We grant the Committee Petition and condition grant of the Restated Petition on compliance by SCP Holdco and Wecom, LLC with the commitments and undertakings set forth in the July 24, 2024 LOA.

SCP Holdco has an affirmative duty to monitor its foreign equity and voting interests, calculate these interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act. 47 CFR §§ 1.5002-1.5003; 47 CFR § 1.5004, Note to paragraph (a).

A failure to comply with and/or remain in compliance with any of these requirements shall constitute a failure to meet a condition of this declaratory ruling and the underlying licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to meet a condition of this declaratory ruling may also result in monetary sanctions or other enforcement action by the Commission.

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

ITC-T/C-20240423-00066 E DASH LIGHT TELECOM LLC
Transfer of Control
Grant of Authority Date of Action: 08/09/2024

Current Licensee: DASH LIGHT TELECOM LLC

FROM: DASH LIGHT TELECOM LLC

TO: DASH LIGHT TELECOM LLC

Dash Light Telecom LLC (Dash Light), a New York limited liability company that holds an international section 214 authorization to provide global resale service (ITC-214-20230424-00052), filed an application for consent to the unauthorized transfer of control of Dash Light from Jeffrey Wasserman to Dashmir Dalipi and Henry Bergmann. The Applicants filed a supplement on May 22, 2024.

Prior to the transaction, Jeffrey Wasserman held a 60% ownership interest in Dash Light, and Dashmir Dalipi held the other 40% interest. On December 26, 2023, without prior Commission consent, Jeffrey Wasserman sold a 50% interest in Dash Light to Henry Bergmann and a 10% interest to Dashmir Dalipi. Henry Bergmann and Dashmir Dalipi, both U.S. citizens, now each hold a 50% ownership interest in Dash Light.

Dash Light filed a request for Special Temporary Authority (STA) related to this application (ITC-STA-20240610-00102), which was granted on July 5, 2024.

Action on this Application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

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

ITC-T/C-20240612-00106 E Lipan Telephone Co., Inc.
Transfer of Control
Grant of Authority Date of Action: 08/09/2024

Current Licensee: Lipan Telephone Co., Inc.

FROM: Lipan Telecommunications Inc

TO: Hilliary Acquisition Texas II LLC

Lipan Telephone Co. (Lipan), a Texas corporation that holds an international section 214 authorization for global resale service (ITC-214-20050426-00159), has filed an application for consent to the transfer of control of Lipan from Lipan Telecommunications, Inc. (LTI) to Hilliary Acquisition Texas II LLC (Hilliary). Lipan is a wholly owned subsidiary of LTI.

Pursuant to a May 16, 2024 Stock Purchase Agreement, Hilliary will purchase all of the outstanding shares of Lipan, and upon closing, Lipan will be 100% controlled by Hilliary. Hilliary is wholly owned by Hilliary Acquisition Corp. 2016, LLC (HAC 2016), both Oklahoma limited liability companies. HAC 2016 is owned equally by four individuals, all U.S. citizens: Edward E. Hilliary (25%), Dustin J. Hilliary (25%), Michael J. Hilliary (25%), and Douglas J. Hilliary (25%).

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

INFORMATIVE

ITC-214-19970722-00425 Onvoy, LLC

By letter dated August 8, 2024, Onvoy, LLC notified the Commission that it plans to discontinue the provision of international switched long-distance service that it provides to end user customers of certain rural incumbent local exchange carriers (RLEC) or their affiliates to customers in Minnesota on September 30, 2024.

ITC-214-19971205-00766 Onvoy, LLC

By letter dated August 8, 2024, Onvoy, LLC notified the Commission that it plans to discontinue the provision of international switched long-distance service that it provides to end user customers of certain rural incumbent local exchange carriers (RLEC) or their affiliates to customers in Minnesota on September 30, 2024.

SURRENDER

ITC-214-19921015-00128 Micronesian Telecomm. Corp

On August 12, 2024, Micronesian Telecomm. Corp notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20021018-00505 National Access Long Distance, Inc.

On August 1, 2024, National Access Long Distance, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20061107-00502 Multiline Long Distance, Inc.

On August 1, 2024, Multiline Long Distance, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20110311-00063 G3 Telecom USA, Inc.

On August 8, 2024, G3 Telecom USA, Inc. notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

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



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
45 L 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. 24-821

Report No. SCL-00480

Thursday August 15, 2024

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.

Hawaiian Telcom, Inc. (HTI) filed an application for authority for a new 10-year cable landing license for the Hawaiian Interisland Cable System (HICS), SCL-MOD-20190305-00007 (old File Nos. SCL-LIC-19921015-00008, S-C-L-93-003). HTI filed supplemental information on June 3, 2024. The application was placed on public notice on June 14, 2024. Streamlined Submarine Cable Landing License Applications, Accepted For Filing, Report No. SCL-00466S, Public Notice, June 14, 2024 (Public Notice). No comments were filed.

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). See Streamlined Submarine Cable Landing License Applications, Accepted For Filing, Report No. SCL-00468S, Public Notice, June 21, 2024.

Licensing History. The Commission granted a cable landing license for HICS in 1993. See GTE Hawaiian Telephone Company, Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Wholly Within the State of Hawaii, Linking the Islands of Kauai, Oahu, Maui and Hawaii, Cable Landing License, File No. S-C-L-93-003, 8 FCC Rcd 7605 (CCB 1993) (HICS Licensing Order). HICS was placed in service on or around July 31, 1994. See Letter from Steven P. Golden, Vice President, External Affairs, Hawaiian Telcom, Inc. to Tom Sullivan, Bureau Chief, International Bureau, Federal Communications Commission (May 11, 2018) (available in ICFS file no. SCL-LIC-19921015-00008). In 2019, the Commission granted an application to modify the cable landing license for HICS to extend the license term for an additional 5-year period up to and including July 31, 2024. See Actions Taken Under Cable Landing License Act, Public Notice, DA No. 19-355, Report No. SCL-00238, rel. April 30, 2019, 34 FCC Rcd 2810 (2019).

HTI requests that the HICS cable license be renewed for 10 more years so that the cable can continue to provide capacity that meets the demand for voice, data, and Internet traffic within the Hawaiian Islands. HTI states that the public interest will be served by allowing HICS to meet increasing demand for broadband traffic. HTI is an incumbent local exchange carrier (ILEC) and it states that HICS supports provision of services to the state of Hawaii, including broadband Internet connectivity and backhaul traffic for wireless carriers from their neighbor island customers to their Points-Of-Presence on Oahu.

Actions Taken: Grant of a cable landing license to Hawaiian Telcom, Inc. (HTI) for a period of 10 years to authorize the continued landing and operation of the Hawaiian Interisland Cable System, a common carrier fiber-optic submarine cable system connecting four of the Hawaiian Islands.

Licensee Information: HTI is 100% owned (voting and equity) by Hawaiian Telcom Communications, Inc. (HTCI), a holding company incorporated in Delaware. HTCI is 100% owned (voting and equity) by Hawaiian Telcom Holdco, Inc. (HTHI), also a holding company incorporated in Delaware. HTHI is 100% owned (voting and equity) by Cincinnati Bell, Inc., a telecommunications company incorporated in Ohio. Cincinnati Bell, Inc. is wholly owned by Red Fiber Parent LLC, a telecommunications company incorporated in Delaware, which is wholly owned by RF Topco LLC, a Delaware limited liability holding company, which in turn is wholly owned by Red Fiber Holdings LLC (RF Holdings), also a Delaware limited liability holding company. The following entities hold a 10% or greater direct interest in RF Holdings: (i) MIP V RF Partners, L.P. (MIP V RFP), a Delaware investment fund, 60.8% equity and 100% voting interests; (ii) several alternative investment vehicles collectively known as the Ares AIVs, that together hold 19.7% equity interests; and (iii) REST US Infrastructure No. 2 Trust, an Australian trust, holding 21.4% equity interests.

According to HTI, MIP V RFP is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RFP's general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V (FCC) AIV, L.P., a Delaware investment fund, holds a 60.8% limited partnership interest in MIP V RFP. MIP V GP holds a general partner interest in both MIP V (FCC) AIV, L.P. and MIP V RFP. Macquarie Infrastructure Partners Inc. (MIP Inc.), a Delaware investment management company, has a management agreement with MIP V GP. MIP is wholly owned by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware investment management company. MIP V GP is controlled by MIRA. MIRA is a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquarie Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company. Thus, MIRA is an indirect wholly-owned subsidiary of MGL. HTI states no entity or individual has a 10% or greater interest in MGL.

According to HTI, RF Holdings is indirectly minority owned by two groups: (i) certain U.S.-organized alternative investment vehicles (Ares AIVs) and certain U.S.-organized co-invest entities, all managed by the Private Equity Group of Ares Management Corporation (Ares Management), a Delaware entity and (ii) Retail Employees Superannuation Trust (REST), a widely held Australian public offer pension fund managed by Retail Employees Superannuation Pty Limited (Rest Trustee), as trustee of the fund.

The Ares AIVs and certain U.S.-organized co-invest entities—which are each limited partnerships organized in Delaware—have an aggregate 19.7% equity interest in RF Holdings. The Applicant states that none of the Ares AIVs holds indirect equity or voting interests in HTI of 10% or greater.

REST US Infrastructure No. 2 Trust has 21.4% equity and voting interests in RF Holdings, through a combination of a 19.5% interest held directly in RF Holdings and indirectly through a 1.9% limited partnership interest in MIP V (FCC) AIV, L.P. REST Nominees No. 2 Pty Ltd, an Australia special purpose vehicle, is the trustee of REST US Infrastructure No. 2 Trust. REST International Infrastructure Investments Holding Trust (REST International Infrastructure), an Australia special purpose vehicle, is the beneficial owner of REST US Infrastructure No. 2 Trust. REST Nominees No. 1 Pty Ltd., an Australia special purpose vehicle, is the legal owner of REST US Infrastructure No. 2 Trust and the trustee of REST International Infrastructure. Retail Employees Superannuation Trust (REST), an Australia superannuation trust, is the beneficial owner of both REST International Infrastructure, REST Nominees No. 1 Pty Ltd, and REST Nominees No. 2 PTY Ltd. Retail Employees Superannuation

Pty Ltd, an Australia trustee entity, is the trustee of REST and the legal owner of REST Nominees No. 1 Pty Ltd and REST Nominees No. 2 Pty Ltd. The Applicant states that while Retail Employees Superannuation Pty Ltd is the trustee of REST, its shares must be held by a person who is a sponsor (persons who represent the interests of employers or members who participate in REST or a group of such employers or members) or their nominee. The Applicant indicates that currently 4 A Class shares and 4 B Class shares are issued and held by nominees for the sponsor members of REST. Approximately 1.9 million members are the ultimate beneficial owners of Retail Employees Superannuation Trust. The Applicants state that these members have no voting or control rights in REST.

Cable Design and Capacity: HICS is a common carrier cable system that is approximately 300 miles in length, connecting four of the Hawaiian Islands: Oahu, Kauai, Maui, and Hawaii. HICS consists of 12 fiber strands in three segments: Koko Head, Oahu-Kihei, Maui; Kihei, Maui-Kawaihae, Hawaii Island (4.14 Tbps design capacity and 0.064 Tbps lit capacity); and Lihue, Kauai-Ko'Olina, Oahu (3.075 Tbps design capacity and 0.375 lit capacity). HTI states that the overall current active capacity of HICS is 439 Gbps. HTI also states that multiple strands of the Koko Head, Oahu-Kihei, Maui segment have been cut since 2016 due to cable sheath erosion caused by sea currents. HTI states that it is considering options to repair, replace, or retire this segment and anticipates making a decision by the end of 2024. HTI says that it migrated traffic from this segment's working strands to HTI's Hawaiian Islands Fiber Network (HIFN) cable system (SCL-LIC-20220111-00003). HTI states that the capacity of HICS has increased since it started operating over 25 years ago, as a result of various equipment upgrades and increasing customer demand since that time.

Landing Points and Ownership: The Kauai landing station is located at Lihue, Hawaii. The Oahu landing stations are located at Ko'Olina, Hawaii and Honolulu, Hawaii. The Maui landing station is located at Kihei, Hawaii. The Hawaii landing station is located at Kawaihae, Hawaii. The HICS cable and all landing stations are fully owned and controlled by HTI, a Hawaiian corporation.

Regulatory Status of the Cable: HTI will continue to operate HICS on a common carrier basis.

Executive Branch Review. HTI requests that the Commission condition grant of this application on continued compliance with the Letter of Assurances regarding HICS and HIFN entered into when Cincinnati Bell Inc., HTI's parent company, was acquired by Red Fiber Parent LLC. Letter of Assurance from Christopher J. Wilson, Vice President and General Counsel, Hawaiian Telcom Inc., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS), Deputy Chief, Compliance and Enforcement (FIRS) on behalf of the Assistant General for National Security, United States Department of Justice, National Security Division; and Mark Hakun, Principal Director of Chief Information Officer for Cybersecurity, U.S. Department of Defense (Mar. 12, 2021) (2021 LOA). See Applications Granted for the Transfer of Control of Cincinnati Bell Inc. and Hawaiian Telcom, Inc. to Red Fiber Parent LLC, WC Docket No. 20-146; AU Docket No. 20-34, Public Notice, 36 FCC Rcd 9018 (May 26, 2021).

Pursuant to Commission rules, we exercised our discretion to not refer this application to the Executive Branch agencies for national security, law enforcement, foreign policy and trade policy review. Unlike most cable landing license applications, this Application involves an existing facility with a mitigation agreement specific to the cable system that was executed in 2021. The application does not propose any changes to the cable system since the 2021 LOA was entered into on March 12, 2021 and there have been no substantive changes in the foreign ownership since the 2021 LOA was entered into. Thus, we found that this Application presented a low or minimal risk to national security, law enforcement, foreign policy, and trade policy. See Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00363S, Public Notice, March 11, 2022. Although we did not refer this application, we provided a courtesy copy of the accepted for filing public notice to the Executive Branch agencies. Public Notice at 3, citing Executive Branch Review Process Order, 35 FCC Rcd 10927, 10941, para. 36, n. 99 (2020); see also id. at 10957, para 81, n. 205. The agencies did not file comments.

Conditions and Requirements: HTI will comply with the routine conditions specified in Section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g).

We grant HTI's request and condition grant of the application on HTI's continued compliance with commitments and undertakings contained in the 2021 LOA. A copy of the 2021 LOA is publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for the appropriate file number (SCL-T/C-20200520-00021) 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 grant of the transfer of control application 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 HTI requested a 10-year term for the HICS cable, and as the cable is already licensed and in-service, this license shall expire on July 29, 2034, 10 years from the grant of this cable landing license.

INFORMATIVE

SCL-STA-20240712-00032

Edge Cable Holdings USA, LLC

On August 12, 2024, we granted the request for special temporary authority (STA) filed by Edge Cable Holdings USA, LLC; AMCS LLC.; Keppel Midgard Holdings Pte Ltd; Keppel Midgard USA, Inc.; and PT Telekomunikasi Indonesia International (together, the "Applicants") for an extension of their STA to construct, connect, and test at their own risk those portions of the Bifrost cable system in U.S. territory prior to the Commission's action of the pending cable landing license application for the Bifrost cable system (SCL-LIC-20221209-00036). The Applicants acknowledge that grant of the STA will not prejudice action by the Commission on the underlying application and that the STA is subject to cancellation or modification upon notice. Further, the Applicants acknowledge that such STA can be revoked by the Commission on its own motion without a hearing.

The STA expires on February 8, 2025.

INFORMATIVE

SCL-STA-20240715-00033

Latam Telecommunications, L.L.C.

On August 12, 2024, we granted the request for special temporary authority (STA) filed by LATAM Telecommunications, LLC and Puerto Rico Telephone Company, Inc. (together, the Applicants) for an extension of their STA 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) (SCL-LIC-20120330-00002) while the Commission considers an application for authority for that segment and landing points (SCL-MOD-20230915-00025). The Applicants acknowledge that grant of this STA request will not prejudice action by the Commission 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 8, 2025.



Federal Communications Commission
Washington, D.C. 20554

August 15, 2024

DA 24-823
In Reply Refer to:
1800B3-RDM
Released: August 15, 2024

HTown Community Broadcasting
c/o Richard Ventry
6830 Bunche Dr
Houston, TX 77091
(sent by electronic email)

In re: HTown Community Broadcasting
New LPFM, Conroe, Texas
Facility ID No. 788367
Application File No. 0000233066

Dear Applicant:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Conroe, Texas, filed by HTown Community Broadcasting (HTown).¹ For the reasons set forth below, we dismiss the Application.

Background. HTown filed the Application during the 2023 LPFM filing window.² In the Application, HTown certifies that it is eligible for an LPFM authorization because it is a nonprofit educational institution or organization.³ In support of this certification, HTown submits a one-page "Education Statement" explaining HTown's organizational goals and educational mission.⁴

Discussion. An LPFM applicant must meet basic eligibility requirements,⁵ and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).⁶ Each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law at the time its application is submitted.⁷ Each

¹ Application File No. 0000233066 (filed Dec. 15, 2023).

² *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

³ Application, Legal Certifications Section, Eligibility Certifications questions.

⁴ *Id.* at Attach. "HTown Community Broadcasting.pdf" (Educational Program Attachment).

⁵ See 47 CFR § 73.853.

⁶ See Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications Section, Eligibility Certifications questions.

⁷ See *id.*; 47 U.S.C. § 397(6)(A); *Procedures Public Notice* at 5-6; *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013) (*Six Applications*).

applicant must also submit an explanatory exhibit in connection with its application.⁸ An LPFM applicant's status as a valid nonprofit organization at the time it files its application is fundamental to our determination of the applicant's qualifications to hold an LPFM authorization.⁹ Applicants who fail to meet these requirements are subject to dismissal.¹⁰

HTown certifies that it is a nonprofit educational institution or organization,¹¹ but neglects to provide any evidence, as required, to establish its non-profit status. HTown's Education Statement fails to demonstrate HTown's status as a valid nonprofit educational organization recognized under state law.¹² Moreover, a search of the Texas Comptroller of Public Accounts entity database shows no registered entity named "HTown Community Broadcasting" or any similar name.¹³ Accordingly, because HTown has not demonstrated that it was incorporated, or organized in a form recognized by Texas law, on December 15, 2023, when it submitted its Application, we find HTown ineligible to hold an LPFM license and dismiss the application.¹⁴

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the application for a construction permit for a new LPFM station at Conroe, Texas, filed by HTown Community Broadcasting on December 15, 2023 (Application File No. 0000233066) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁸ See LPFM Application, Legal Certifications Section, Eligibility Certifications questions. *See also Procedures Public Notice* at 6 (nonprofit educational organizations "also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.").

⁹ *Six Applications*, 28 FCC Red at 13395-96, para. 14.

¹⁰ *See Procedures Public Notice* at 6.

¹¹ *See* Application at Legal Certifications Section, Eligibility Certifications questions.

¹² *See* Educational Program Attachment.

¹³ Texas Comptroller of Public Accounts, Tax-Exempt Entity Search, <https://comptroller.texas.gov/taxes/exempt/search.php> (last visited Aug. 8, 2024).

¹⁴ We note that, in general, a dismissed applicant has one opportunity to file a minor curative amendment to its application and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*. Any amendment and petition must be filed within 30 days of the dismissal, propose only minor changes, and comply with all relevant rules. *See Procedures Notice* at 12.

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

In re Application of	)	
	)	NAL/Acct. No. MB-202441410011
Carolina University	)	FRN: 0024472748
	)	Facility ID No. 200391
For Renewal of License for	)	File No. 0000239124
FM Translator Station W234CZ	)	
Chattanooga, Tennessee	)	

FORFEITURE ORDER

Adopted: August 15, 2024

Released: August 15, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we affirm our *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*¹ and issue a monetary forfeiture in the amount of four thousand eight hundred seventy-five dollars (\$4,875) to Carolina University (Licensee), licensee of FM translator station W234CZ, Chattanooga, Tennessee (Station), for willfully violating section 73.3539² of the Commission's rules (Rules) by failing to file a timely license renewal application for the Station, and willfully and repeatedly violating section 301 of the Communications Act of 1934, as amended (Act),³ by engaging in unauthorized operation of the Station after its authorization expired.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ An application for the renewal of the Station's license should have been filed by April 1, 2020, the first day of the fourth full calendar month prior to the Station's August 1, 2020, license expiration date.⁵ No such application was filed by the April 1, 2020, deadline, and the Station's license expired on August 1, 2020.⁶

3. Licensee later filed its license renewal application on February 16, 2024.⁷ Licensee explained that it intended to file the renewal application for the Station with the renewal applications for

¹ *Carolina University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 24-717 (MB July 24, 2024).

² See 47 CFR § 73.3539.

³ See 47 U.S.C. § 301.

⁴ 47 CFR § 73.3539(a).

⁵ See 47 CFR §§ 73.1020, 73.3539(a).

⁶ See *NAL* at 1-2, para. 2.

⁷ Application File No. 0000239124 (filed Feb. 16, 2024) (Application).

its two other stations, which were timely filed, but failed to do so.⁸ Licensee stated that it discovered that the Station's renewal application was not filed with the renewal application for its two other stations after being notified by Bureau staff working on a pending transfer of control application.⁹ The Licensee, therefore, requested a waiver of the renewal filing deadline.¹⁰ Licensee did not request special temporary authority to operate the Station following the expiration of the Station's license.

4. Accordingly, on July 24, 2024, we released the *NAL*, which proposed a forfeiture of thirteen thousand dollars (\$6,500).¹¹ As noted in the *NAL*, the Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of \$10,000 for operation without an instrument of authorization for the service, and \$3,000 for failure to file a required form or information.¹² Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we reduced the forfeiture for these apparent violations from the base amount of \$10,000 for unauthorized service to \$5,000, and from \$3,000 for the late-filed license renewal application, to \$1,500 because, as a translator station, the Station is providing a secondary service.¹³ The *NAL* gave the Licensee thirty days to pay the full amount of the \$6,500 proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.¹⁴

5. On August 7, 2024, the Licensee submitted a written response to the *NAL* in which it does not dispute that it violated section 301 of the Act and section 73.3539 of the Rules, but argues that the proposed forfeiture should be reduced because its late-filed license renewal application was an "inadvertent mistake," and that it has "instituted procedures to ensure that such a violation does not occur again."¹⁵ Licensee also urges the Bureau to reduce the proposed forfeiture based on its "long history of compliance with FCC rules."¹⁶

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,¹⁷ section 1.80 of the Rules,¹⁸ and the *Forfeiture Policy Statement*.¹⁹ Section 503(b)(2)(E) of the Act requires that the Commission 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

⁸ Application, Attach., "Carolina U - W234CZ Renewal App Exhibit.PDF". See Application File Nos. 0000091087 and 0000106050 (license renewal applications for WDYN(AM), Rossville, Georgia, and W235AO, Chattanooga, Tennessee, respectively).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *NAL* at 3, para. 8.

¹² *Id.* at 3, para. 6 (citing *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); 47 CFR § 1.80(b)(11), note to paragraph (b)(11), Section I.

¹³ *Id.* at 3-4, para. 8 (citing *SCLC Jacksonville Florida*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 13279, 13281, para. 6 (MB 2021) (reducing forfeiture by half for untimely filed renewal application and for unauthorized operations for an LPFM station due to secondary service status)).

¹⁴ *Id.* at 4, para. 10.

¹⁵ E-mail from Madison Laton, Esq., Associate, Fletcher, Heald & Hildreth, PLC, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, at 1 (Aug. 7, 2024, 05:41 PM EST)) (*NAL Response*).

¹⁶ *Id.* at 2.

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 CFR § 1.80.

¹⁹ See generally, *Forfeiture Policy Statement*.

offenses, ability to pay, and other such matters as justice may require.²⁰

7. We have considered Licensee's response in light of these statutory factors. We affirm our finding that the Licensee willfully violated section 301 of the Act and section 73.3539 of the Rules. We reject Licensee's argument that the violation being an "inadvertent mistake" justifies a reduction in the proposed forfeiture. The Commission has held that violations resulting from inadvertent error or oversight are willful violations.²¹ However, because Licensee has a history of compliance with the Rules, we will reduce the proposed forfeiture to \$4,875.²²

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that Carolina University **SHALL FORFEIT** to the United States the sum of \$4,875 for its willful and repeated violation of section 301 of the Communications Act of 1934, as amended, and its willful violation of section 73.3539 of the Commission's rules.

9. **Payment of the forfeiture shall be made within thirty (30) calendar days after the release of this Forfeiture Order.**²³ Licensee shall send electronic notification of payment to **Alexander.Sanjenis@fcc.gov** and **Shante.Willis@fcc.gov**. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 504(a).²⁴

10. Payments shall 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. 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

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ *Whidbey Island Center for the Arts, Forfeiture Order*, 25 FCC Rcd 8204 (MB 2010) (*Whidbey Island Forfeiture Order*) (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (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"); *WDKA Acquisition Corp.*, Forfeiture Order, 28 FCC Rcd 16398, 16400, para. 8 (MB 2013).

²² *Heritage Media of Kentucky Inc.*, Forfeiture Order, 36 FCC Rcd 4716, 4717, para. 5 (MB 2021) (reducing proposed forfeiture by 25% based on history of compliance with the Rules).

²³ See 47 CFR § 1.80(g)(4).

²⁴ See 47 CFR § 1.80(g)(5).

²⁵ See 47 CFR § 1.80(i). 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>.

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.

11. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ A copy of the request must also be sent to **Alexander.Sanjenis@fcc.gov** and **Shante.Willis@fcc.gov**. 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.

- Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.²⁹
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

12. **IT IS FURTHER ORDERED** that copies of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Carolina University, 420 S. Broad Street,

²⁸ See 47 CFR § 1.1914.

²⁹ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

Winston-Salem, NC 27101. A copy will also be sent to Licensee's counsel, Seth L. Williams, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-826

Released: August 15, 2024

MEDIA BUREAU ANNOUNCES PUBLICATION OF CLOSED CAPTIONING DISPLAY SETTINGS REPORT AND ORDER

Compliance is not required until August 17, 2026 at earliest

MB Docket No. 12-108

On July 19, 2024, the Commission released the *Closed Captioning Display Settings Report and Order*, which adopted a rule that requires manufacturers of covered apparatus and multichannel video programming distributors to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing.¹ By this Public Notice, the Media Bureau (Bureau) announces that the *Closed Captioning Display Settings Report and Order* was published in the Federal Register on August 15, 2024, and thus is effective as of September 16, 2024, which is the date thirty (30) days after Federal Register publication.²

By the terms of the *Closed Captioning Display Settings Report and Order*, however, compliance “will not be required until the Office of Management and Budget has completed its review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act or two years after the date of publication in the *Federal Register*, whichever is later.”³ The Bureau will publish a subsequent Public Notice to announce the compliance date once the Office of Management and Budget completes its review of the rule’s requirements.⁴

- FCC -

¹ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Third Report and Order, FCC 24-79 (rel. July 19, 2024) (*Closed Captioning Display Settings Report and Order*).

² Federal Communications Commission, *Accessibility of User Interfaces, and Video Programming Guides and Menus*, 89 Fed. Reg. 66268 (August 15, 2024).

³ *Closed Captioning Display Settings Report and Order* at para. 59.

⁴ *Id.* (“The Commission directs the Media Bureau to announce the compliance date for section 79.103(e) by subsequent Public Notice and to revise section 79.103(e) accordingly.”).

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

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

ORDER

Adopted: August 15, 2024

Released: August 15, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) expands EMPOWER Broadband, Inc. (EMPOWER)'s Eligible Telecommunications Carrier (ETC) designation in Virginia to become eligible to receive Connect America Fund Phase II Auction (Phase II Auction) support associated with certain census block groups in Virginia (Assigned CBGs), a subpart of an original Phase II Auction support award authorized to RiverStreet Communications of Virginia, Inc. (RiverStreet).¹ This expanded ETC designation is conditioned upon, limited by, and effective only upon, EMPOWER's authorization to receive this support. In conjunction with this designation, the Bureau also grants EMPOWER a conditional authorization to receive the support associated with the Assigned CBGs. Further, the Bureau expands EMPOWER's ETC designation to include additional areas in south central Virginia where it is not eligible to receive high cost support so that EMPOWER may become eligible to receive only Lifeline support for these areas.² In expanding EMPOWER's Virginia ETC designation, the Bureau finds that EMPOWER meets the eligibility criteria to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Federal Communications Commission (Commission) rules.³

II. BACKGROUND

A. Section 214 Authorization

2. The Bureau takes this action in conjunction with the Bureau's approval of an application filed by EMPOWER and RiverStreet, pursuant to section 214 of the Act, and sections 63.03-63.04 of the

¹ See EMPOWER Broadband, Inc. Petition for Designation as an Expanded Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 at 3, 13, Exh. A1, List of Census Blocks in which Petitioner Seeks an Expanded Designation as a High-Cost and Low-Income (Lifeline) Eligible Telecommunications Carrier (filed May 14, 2024) (ETC Petition); *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019) (authorizing RiverStreet to receive \$32,140,887.10 in Phase II Auction support to serve 13,518 locations in eligible areas in Virginia). We define this service area based on the published list of CAF-eligible census blocks associated with the assigned CBGs, thus superseding any possible discrepancies in the ETC petition's description of such area. See *Connect America Fund Phase II: Assignments - Assigned Census Blocks*, https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks.

² See ETC Petition at 19-120, Exh. A2 (List of Census Blocks in which Petitioner Seeks Designation Solely as a Low-Income (Lifeline) Eligible Telecommunications Carrier).

³ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

Commission's rules,⁴ requesting consent to assign to EMPOWER RiverStreet's Phase II Auction support for certain Assigned CBGs in addition to all rights, obligations, and conditions associated with the receipt of the support.⁵ Pursuant to the terms of the approved transaction and conditioned upon EMPOWER's future authorization, EMPOWER will receive an approximate additional \$8,173,841.30 for the Assigned CBGs in exchange for its commitment to serve an additional 3,757 locations,⁶ bringing its total Phase II Auction support in Virginia to \$10,801,099.47 and its total number of supported locations to 4,595.⁷

B. ETC Designation Requirements

3. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."⁸ Accordingly, an ETC designation is a prerequisite to receiving universal service support available through the high cost and low income components (Lifeline)⁹ of the Universal Service Fund. In a given geographic area, a carrier may be designated as an ETC to become eligible to receive support from both of these components or, for areas ineligible for high cost support, may be designated as an ETC to become eligible to receive support from only the Lifeline program (Lifeline-only ETC designation).¹⁰ All ETCs must offer the Lifeline discount on all qualifying services, deploy a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offer such service pursuant to its high cost obligations.¹¹

4. Congress gives primary authority for ETC designations to state commissions.¹² The Commission has authority only when "a common carrier [is] providing telephone exchange service and

⁴ See *Grant of Domestic 214 Application for the Acquisition of Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc. and Limited Relief for EMPOWER from Certain Phase II Auction Compliance and Letter of Credit Rules*, WC Docket No. 24-145, Public Notice, DA 24-741 (WCB 2024) (*Assignment and Waiver Public Notice*).

⁵ Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by Empower Broadband, Inc., WC Docket No. 24-145, Exh. A (filed May 14, 2024).

⁶ *Assignment and Waiver Public Notice* at 3. These amounts are associated with the assigned CBGs, and include the support that has been withheld from RiverStreet but that will be immediately transferred to EMPOWER pursuant to the grant of EMPOWER's waiver request. See *id.* at 8.

⁷ *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019) (authorizing EMPOWER to receive \$1,868,320.00 in Phase II Auction support in Virginia to serve 838 locations).

⁸ 47 U.S.C. § 214(e).

⁹ *Id.* § 254(e). The Lifeline program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support available for households on Tribal lands. See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012). Eligible services include voice and broadband Internet access service meeting certain requirements. *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, 30-32 (2016) (*Lifeline Modernization Order*).

¹⁰ See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); *Lifeline Modernization Order*, 31 FCC Rcd at 3974, 4074-75, paras. 35, 311-12 (requiring all high cost support recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

¹¹ 47 CFR part 54, subparts D, K, L, M.

¹² 47 U.S.C. § 214(e)(2) (providing, in relevant part, that a state commission "shall upon its own motion or upon request designate a common carrier that meets [certain requirements] as an eligible telecommunications carrier for a service area designated by the State commission").

exchange access that is not subject to the jurisdiction of a State commission.”¹³ The petitioner for ETC designation must demonstrate that the Commission has jurisdiction and may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”¹⁴ The Commission has delegated its authority to the Bureau to consider appropriate ETC designation requests.¹⁵

5. In its petition for Commission ETC designation, a petitioner must: (1) certify that it offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) certify that it offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;¹⁶ (3) describe how it advertises or will advertise the availability of the supported services and the charges therefor using media of general distribution;¹⁷ (4) describe the geographic service area within which the petitioner requests to be designated as an ETC;¹⁸ and (5) certify that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.¹⁹ A petitioner must also: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.²⁰ To receive a Lifeline-only ETC designation, a petitioner must specifically commit to meeting Lifeline consumer enforcement and certification standards and describe how it intends to meet such standards.²¹

6. Prior to designating a carrier as an ETC, the Commission must determine whether such designation is in the public interest.²² When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner’s service offering.²³ The Commission has explained that, based on long-standing precedent, the ETC public interest inquiry is a cost-benefit analysis focusing on the petitioner’s

¹³ *Id.* § 214(e)(6).

¹⁴ *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000); *see* 47 U.S.C. § 214(e)(6).

¹⁵ *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹⁶ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

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

¹⁸ An ETC’s “service area” is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC’s service area and that of an incumbent rural telephone company, the Commission has separately forbore from imposing this requirement on Phase II Auction support recipients. *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6006-6009, paras. 159-168 (2016) (*Phase II Auction Order*).

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

²⁰ *See* 47 CFR § 54.202(a).

²¹ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

²² *See, e.g., Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF).²³

C. EMPOWER Petition for ETC designation

7. On May 14, 2024, EMPOWER filed its petition to expand its ETC designation in Virginia where it is eligible to receive high cost support to include the Assigned CBGs and to expand those areas where it is only eligible to receive Lifeline support.²⁴ On June 12, 2024, the Bureau released a Public Notice seeking comment on this petition.²⁵ The Bureau did not receive comments or petitions in opposition to the ETC Petition. In connection with this petition, EMPOWER reaffirms each of its commitments and certifications of compliance made in prior ETC petitions that were granted by the Bureau – which includes areas in Virginia for which it is eligible to receive Phase II Auction, Rural Digital Opportunity Fund, and Lifeline-only support – and incorporates them by reference into its current ETC petition.²⁶

III. DISCUSSION

8. After considering EMPOWER's incorporation by reference of its certifications and commitments made in its earlier ETC petitions that the Bureau had granted, and all arguments raised by EMPOWER in its ETC Petition, we find that EMPOWER has satisfied all requirements for ETC designation, and accordingly, we expand EMPOWER's designated service area in Virginia to include the Assigned CBGs, and the Lifeline-only area described in its ETC Petition. We specify that EMPOWER's expanded ETC designation will cover the Assigned CBGs subject to and limited by its authorization to receive the support associated with the Assigned CBGs (expanded service area).

A. Satisfaction of ETC Requirements

9. EMPOWER has demonstrated that neither the Virginia State Corporation Commission (VSCC) nor the Virginia legislature has taken action inconsistent with the Commission's prior exercises of jurisdiction to designate EMPOWER as an ETC in Virginia for purposes of becoming eligible to receive both high cost and Lifeline support and for purposes of becoming eligible to receive only Lifeline support.²⁷ Accordingly, the Bureau reaffirms such jurisdiction and exercises its delegated authority to expand EMPOWER's ETC designations consistent with its determinations and findings below.

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-89, paras. 40-41 (2005).

²⁴ See generally ETC petition. See *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 34 FCC Rcd 1966 (WCB 2019) (designating EMPOWER as an ETC in areas where it would become authorized to receive Phase II Auction support and additional areas for the purpose of becoming eligible to receive only lifeline support) (*Phase II Auction ETC Designation Order*); *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384 (WCB 2021) (designating EMPOWER as an ETC in areas where it would become authorized to receive Rural Digital Opportunity Fund (RDOF) support).

²⁵ See *Wireline Competition Bureau Seeks Comment on EMPOWER Broadband, Inc.'s Petition for Expansion of its Eligible Telecommunications Carrier Designation*, WC Docket 09-197, DA 24-561 (WCB rel. June 12, 2024) (*Notice and Comment Public Notice*).

²⁶ ETC Petition at 10. See *Petition for Eligible Telecommunications Carrier Status*, WC Docket No. 09-197 (filed Sept. 27, 2019, as supplemented, Feb. 22, 2019) (Initial Phase II Auction ETC Petition) (relating to Phase II Auction and Lifeline only eligible areas); *Petition for Eligible Telecommunications Carrier Status*, WC Docket No. 09-197 (filed Jan. 8, 2021, as supplemented, Feb. 9, 2021) (relating to RDOF areas).

²⁷ See ETC Petition at 4 (quoting a 2018 VSCC order stating that the VSCC "is of the opinion that the [VSCC] has not asserted jurisdiction over service providers such as EMPOWER, 47 U.S.C. § 214(e)(6) is applicable to the Company's request for ETC designation, and EMPOWER should make its request to the FCC to be designated as an ETC"); *Application of EMPOWER Broadband, Inc., for Designation as an Eligible Telecommunications Carrier*, Order, Case No. PUR-2018-00155, at 2 (Sept. 25, 2018).

10. We find that EMPOWER has satisfied requirements for ETC designation and the related Commission rules for the expanded service areas. EMPOWER has established that it will offer the service supported by the universal service support mechanism,²⁸ will offer supported services using a combination of its own facilities and resale of another carrier's services,²⁹ commits to advertising the availability of the supported services and related charges using media of general distribution, including the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers,³⁰ and certifies that is not subject to a denial of support under the terms of the Anti-Drug Abuse Act of 1988.³¹

11. We also find that EMPOWER has established its commitment to meeting required service standards. EMPOWER has demonstrated its capabilities to remain functional in emergency situations.³² It also has demonstrated and certified its ability to comply with Phase II Auction support public interest requirements in the Assigned CBGs.³³ In evaluating such ability, the Bureau considers its prior determination that EMPOWER's earlier certifications and commitments adequately demonstrated its ability to meet Phase II Auction requirements³⁴ and EMPOWER's record of meeting Phase II Auction

²⁸ See ETC Petition at 5 (stating that EMPOWER satisfies its ETC designation requirements "in its capacity as a facilities based, common carrier provider"); Initial Phase II Auction ETC Petition at 5 (certifying that EMPOWER is a "common carrier" under section 214(e)(1),(6) of the Act); ETC Petition at 7-8 (committing to a voice service offering satisfying the requirements of section 54.101(a) of the Commission's rules); Initial Phase II Auction ETC Petition at 5 (certifying that it will offer service meeting the requirements of section 54.101 of the Commission's rules). 47 U.S.C. § 214(e)(1), (6) (establishing that an ETC must offer telecommunications service on a common basis and must offer the supported service (as determined by the Commission)); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched telephone network or its functional equivalent).

²⁹ ETC Petition at 3 (EMPOWER states that it uses its own facilities, as well as those of Mecklenburg Electric Cooperative, to provide these broadband and interconnected VoIP services); 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1). EMPOWER is a wholly-owned subsidiary of Mecklenburg Electric Cooperative, a Virginia corporation and rural electric cooperative that is owned by its members. *Assignment and Waiver Public Notice* at 3. Facilities are the ETC's "own" if the ETC has an exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within the same holding company structure. See *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6698 (WCB 2018) (*Phase II Auction ETC Guidance Public Notice*); see also 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

³⁰ See ETC Petition at 6-7; Initial Phase II Auction ETC Petition at 6; 47 U.S.C. § 214(e)(1)(B); 47 CFR §§ 54.201(d)(2), 54.405.

³¹ ETC Petition at 10; 47 CFR § 1.2002.

³² See ETC Petition at 5; Initial Phase II Auction ETC Petition at 7; 47 CFR § 54.202(a)(2) (requiring ETCs to commit to having sufficient back-up power to ensure functionality in the designated service area without an external power source, the capability of re-routing traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations).

³³ See ETC Petition at 7-8; 47 CFR §§ 54.101(d), 54.202(a)(1)(i). For Phase II Auction support recipients, the Bureau waived certain requirements in section 54.202 of the Commission's rules and adopted a presumption that designation will serve the public interest. *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6701. The Bureau has found that EMPOWER is in the same position as any other CAF Phase II support recipient with respect this ETC designation and is entitled to the same waivers and presumption. See *Notice and Comment Public Notice* at 3 n.18.

³⁴ See *Phase II Auction ETC Designation Order*, 34 FCC Rcd at 1971, para. 16 (finding that EMPOWER, among other petitioners, established its ability to comply with Phase II support requirements, taking into account certifications and demonstrations in the short- and long-form applications, including information supporting the technical and financial ability meet these requirements, a certification of commitment to meeting relevant public

(continued....)

requirements in other areas in Virginia.³⁵ The Bureau also gives consideration to EMPOWER's description of its technical, financial, and managerial capability to provide voice and broadband services meeting or exceeding Phase II Auction standards in the Assigned CBGs in the Assignment and Waiver Application.³⁶

12. We further find that EMPOWER has established its commitment to complying with service requirements applicable to Lifeline support. EMPOWER commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high cost areas where it is authorized to receive support.³⁷ For those areas where EMPOWER is seeking a Lifeline-only ETC designation, EMPOWER has specifically committed to meeting Lifeline consumer enforcement and certification standards and describes how it intends to meet such standards.³⁸ EMPOWER has demonstrated the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in Lifeline-only eligible areas,³⁹ and its commitment to abide by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules, in Lifeline-only eligible areas.⁴⁰ We conclude that EMPOWER has sufficiently described the terms and conditions of the service plans that it will make available to the public in Lifeline-only eligible areas.⁴¹

13. In making these findings, we emphasize that EMPOWER must remain legally responsible for, and managerially capable of, ensuring that the service meets consumer protection and service quality standards.⁴² In addition, as a condition of authorization, EMPOWER must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.⁴³ Further, all ETCs receiving Lifeline support must report certain information to the Commission, the Universal Service Administrative Company (USAC), and the local

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interest obligations, and certification of compliance with all statutory and regulatory requirements for receipt of universal service support); 47 CFR §§ 54.310(e)(1), 54.315(b)(2).

³⁵ See ETC Petition at 6 (stating that EMPOWER "has been successful in deploying broadband networks in Virginia that it has utilized to provide to its customers 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, communications services").

³⁶ See Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc., WC Docket No. 24-145 at 9 (filed May 14, 2024) (Assignment and Waiver Application) (stating that there are no anticipated changes to the fiber-to-the-home technology that is being used by EMPOWER to satisfy its Phase II Auction obligations in Virginia and no anticipated changes to operations or other circumstances that might compromise its ability to meet its service obligations).

³⁷ See ETC Petition at 7; 47 CFR § 54.400 et seq.

³⁸ See ETC Petition at 8-9; 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification).

³⁹ See ETC Petition at 6; 47 CFR § 54.202(a)(4).

⁴⁰ See ETC Petition at 8-9; 47 CFR §§ 54.202(a)(3); 54.422(b)(3) (requiring federally designated Lifeline-only ETCs to certify they comply with applicable consumer protection rules).

⁴¹ 47 CFR § 54.202(a)(5), (6).

⁴² See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

⁴³ 47 CFR § 54.313 (requiring an annual report that includes certifications as to rates, functionality, and deployment, among other things); *id.* § 54.314 (requiring an annual certification stating that all federal high cost support provided was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended); *id.* § 54.316 (requiring build-out milestone reporting).

regulatory authority, pursuant to section 54.422 of the Commission's rules.⁴⁴

B. Public Interest Analysis

14. Based on the information, representations, and certifications in the ETC Petition and consistent with the Bureau's findings in the *Assignment and Waiver Public Notice* and its prior ETC designations of EMPOWER, we find that EMPOWER has demonstrated that the expansion of its ETC service areas serves the public interest and would provide numerous benefits to consumers.⁴⁵ By making EMPOWER eligible to receive Phase II Auction support for the Assigned CBGs, EMPOWER will bring to these areas social and economic benefits by accelerating access to advanced services meeting specific performance requirements.⁴⁶ Because it will be subject to close oversight,⁴⁷ default consequences, and potentially, forfeiture and other penalties for the failure to meet Phase II Auction support requirements,⁴⁸ EMPOWER has increased incentives to provide ubiquitous service throughout its designated service area at rates and on terms that are reasonably comparable to those associated with comparable service offerings in urban areas. Pursuant to EMPOWER's commitment to offer Lifeline-supported services and to meeting or exceeding Lifeline requirements, granting the expansion in both high cost eligible and Lifeline eligible areas will help ensure increased consumer choice, affordability, and improved quality of service in the expanded area.

15. In conclusion, and based on the information, representations, and certifications in its 214 Assignment and Waiver Application and ETC Petition, we find that EMPOWER has met all applicable conditions and prerequisites for ETC designation and that designation serves the public interest. Accordingly, we designate EMPOWER as an ETC for purposes of becoming eligible to receive Phase II Auction support associated with the designated service area.

C. Regulatory Oversight

16. Under section 254(e) of the Act, an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴⁹ Under section 214(e) of the Act, an ETC must provide supported services throughout the designated service area for which it receives an ETC designation.⁵⁰ When and if the ETC is authorized to receive high cost support, it must file an annual certification for each state in which it receives support that all federal high cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁵¹ The Commission conditions future support awarded through the high cost program on the filing of such certification.⁵²

⁴⁴ 47 CFR § 54.422; *see also id.* § 54.410.

⁴⁵ *See* ETC Petition at 11; *Assignment and Waiver Public Notice* at 3-5.

⁴⁶ *See Assignment and Waiver Public Notice* at 11.

⁴⁷ 47 CFR § 54.313 (requiring an annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

⁴⁸ *See* 47 CFR §§ 54.315(c)(4)(i); 54.320(c).

⁴⁹ 47 U.S.C. § 254(e).

⁵⁰ *Id.* § 214(e).

⁵¹ 47 CFR § 54.314(b).

⁵² *Id.*

17. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its qualifying voice or broadband services by the amount of the support for the eligible consumer.⁵³ In addition, it must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.⁵⁴

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

19. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support received is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas for which the relevant ETC(s) have been designated.⁵⁵ The ETC must provide such records and documentation to the Commission and USAC upon request.⁵⁶ If EMPOWER fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁵⁷ The Commission also may assess forfeitures for violations of Commission rules and orders.⁵⁸ We note that the Commission has announced that, as part of the Rural Broadband Accountability Plan (RBAP), it will increase audits, verifications, and transparency for USF high cost programs, including the Phase II Auction.⁵⁹ With the establishment of RBAP, Phase II Auction support recipients, like other high cost recipients, will be subject to a high level of accountability as they work to meet applicable performance requirements and benchmarks.

IV. CONDITIONAL AUTHORIZATION OF CAF PHASE II SUPPORT

20. As stated above, we have found that EMPOWER has sufficiently demonstrated its managerial, financial, and technological capabilities to meet its CAF Phase II Auction obligations to serve the Assigned CBGs, and accordingly, we conditionally authorize EMPOWER to receive the support associated with these CBGs conditioned upon satisfaction of the following prerequisites within three months from the release date of this Order: 1) submission and approval of an irrevocable letter of credit (LOC) securing the requisite amount of support for the Assigned Blocks; 2) submission and approval of a new supporting Bankruptcy Opinion Letter; and 3) submission of a notice of consummation of the transaction in the Commission's Electronic Comment Filing System (ECFS) under WC Docket Nos. 24-145 and WC Docket No. 10-90. Applicants should also email a copy of this notice directly to Gregory Kwan at gregory.kwan@fcc.gov and to Nissa Laughner at nissa.laughner@fcc.gov. EMPOWER should submit the LOC and the supporting Bankruptcy Opinion Letter directly to USAC for review and approval.

⁵³ See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

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

⁵⁵ 47 U.S.C. §§ 220, 403.

⁵⁶ 47 CFR § 54.417.

⁵⁷ See *id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

⁵⁸ See 47 U.S.C. § 503(b).

⁵⁹ Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

21. If and when all of these prerequisites are satisfied, the authorization of EMPOWER to receive the support associated with the Assigned CBGs will become effective.⁶⁰ At that time, USAC will transfer all future support payments (and any withheld payments) to EMPOWER as of the next month following the authorization or as soon as reasonably practical thereafter. The Bureau will announce the date that this authorization became effective in a monthly release. Pending the effective date of EMPOWER's authorization, RiverStreet must maintain the irrevocable letter of credit securing the support for the Assigned CBGs and will retain sole responsibility for complying with the universal service fund requirements for these CBGs. All support and assets associated with the Assigned CBGs must be transferred from RiverStreet to EMPOWER, including any disbursements for the Assigned CBGs received by RiverStreet pending the effective date of EMPOWER's authorization.

22. We remind EMPOWER that once it satisfies all conditions of authorization, it assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact its ability to meet its obligations in the future, including technical, marketplace, and on-the-ground conditions.⁶¹ Indeed, any carrier seeking authorization to receive high cost support pursuant to a section 214 authorization must conduct the proper due diligence prior to consummation of the transaction and, in doing so, must assume all risks and consequences of noncompliance with program requirements, including default recovery of support and potential forfeiture penalties.⁶² In addition and consistent with decisions in the *Assignment and Waiver Public Notice*, EMPOWER must meet all administrative, performance, and deployment obligations and deadlines, including the requirement to deploy voice and broadband service meeting minimum standards to the requisite number of locations by specific service milestones.⁶³

V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that EMPOWER Broadband, Inc. is designated as an Eligible Telecommunications Carrier in an expanded service area that includes certain census block groups eligible for Phase II Auction support to be acquired by EMPOWER Broadband, Inc., conditioned upon, limited by, and effective upon EMPOWER's authorization to receive the associated support. This ETC Designation is granted in conjunction with the conditional authorization of EMPOWER Broadband, Inc. to receive this support, to the extent described in this Order.

⁶⁰ If EMPOWER and RiverStreet fail to consummate the transaction within this time frame, they must file notice of the failure within 10 calendar days of the end of such time frame in the Commission's Electronic Comment Filing System (ECFS) under WC Docket Nos. 24-145 and 10-90. If EMPOWER does not meet one or more of the conditions before the three month period specified above expires, the Bureau will reassess EMPOWER's qualifications for authorization.

⁶¹ See, e.g., *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*, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 6158, 6159 (WCB 2022).

⁶² See *Connect America Fund et al., WC Docket No. 10-90 et al., Order on Reconsideration*, 33 FCC Rcd 1380, 1390, para. 25 (2018) ("emphasiz[ing] that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications.").

⁶³ See *Assignment and Waiver Public Notice* at 5 (denying EMPOWER's request to extend deployment milestone deadlines); 47 CFR § 54.310(c) (providing that Phase II Auction support recipients must report deployment to 40% of their required locations by December 31, 2022, 60% of such locations by December 31, 2023, 80% of such locations by December 31, 2024, and 100% of the locations by December 31, 2025).

24. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that EMPOWER Broadband, Inc.'s Lifeline-only ETC designation is expanded to those areas for which EMPOWER seeks such designation, to the extent described in this Order.

25. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Virginia State Corporation Commission and to the Universal Service Administrative Company.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

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

In the Matter of	)	
	)	
Disclosure and Transparency of Artificial	)	MB Docket No. 24-211
Intelligence-Generated Content in Political	)	
Advertisements	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 10, 2024

Released: July 25, 2024

Comment Date: 30 days after date of publication in the Federal Register

Reply Comment Date: 45 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioner Gomez issuing separate statements;
Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. Political advertising serves an important function in this country, providing information to assist voters in making informed decisions about candidates for public office and controversial issues of public importance. The use of emerging artificial intelligence (AI) technologies in political advertisements can serve the public interest in fostering an informed electorate by, for example, empowering smaller political campaigns with limited financial resources to reach larger audiences. The use of AI technologies in political advertising, however, also has the potential to produce “deepfakes”¹ and other deceptive and misleading information, sowing confusion and distrust among the voting public.

2. Recognizing the potentially beneficial use of AI in political advertisements while keeping in mind broadcasters and other regulated entities’ statutory obligation to serve the public interest by taking responsibility for material—including false, misleading or deceptive material—disseminated to the public through their facilities, we initiate this Notice of Proposed Rulemaking (NPRM) to provide greater transparency regarding the use of AI-generated content in political advertising. Specifically, we propose to require radio and television broadcast stations; cable operators, Direct Broadcast Satellite (DBS) providers, and Satellite Digital Audio Radio Service (SDARS) licensees engaged in origination programming;² and permit holders transmitting programming pursuant to section 325(c) of the Act,³ to provide an on-air announcement for all political ads⁴ that include AI-generated content disclosing the use of such content in the ad. We also propose to require these licensees and regulatees to include a notice in their online political files for all political ads that include AI-generated content disclosing that the ad contains such content. To be clear, we are not proposing to ban or otherwise restrict the use of AI-generated content in political ads. Rather, we are simply seeking to ensure that listeners and viewers are informed when political ads include such content so that the public can evaluate such ads for themselves.

II. BACKGROUND

A. The FCC’s Role

3. The presentation of political programming is considered an essential element of broadcasters’ obligation to serve the public interest because of the critical role such programming plays in fostering an informed electorate, which in turn is vital to the effective operation of the democratic process.⁵ In keeping with this critical role, the political programming and recordkeeping requirements

¹ See *infra* para. 10 (discussing “deepfakes”).

² “Origination cablecasting” is “[p]rogramming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.” 47 CFR § 76.5(p). “DBS origination programming” is “programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider.” *Id.* § 25.701(b)(2). Although the political file requirements applicable to SDARS licensees expressly apply to SDARS licensees “engaged in origination programming,” the Commission’s rules do not have a definition of “SDARS origination programming.” See *id.* § 25.702(b)(1). As discussed below, we propose to add to the rules a definition of “SDARS origination programming” to mean “programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee.” See *infra* para. 22.

³ 47 U.S.C. § 325(c).

⁴ For purposes of this proceeding, the term “political ads” includes both candidate advertisements (i.e., ads by or on behalf of legally qualified candidates for public office) and issue advertisements (i.e., paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include ads by or on behalf of legally qualified candidates for public office).

⁵ See, e.g., *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968) (“In short, the presentation of political broadcasts, while only one of many elements of service to the public, is an important facet, deserving the licensee’s closest attention, because of the contribution broadcasting can thus make to an informed electorate—in
(continued....)

established by Congress and implemented by the Commission ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and promote transparency about the entities that sponsor political ads. Further, the Commission has long recognized that broadcasters “must assume responsibility for all material which is broadcast through their facilities,” “includ[ing] all programs and advertising material which they present to the public,” and “to take all reasonable measures to eliminate any false, misleading, or deceptive matter” and that “[t]his duty is personal to the licensee and may not be delegated.”⁶

4. *Political Programming Requirements.* The relevant statutory political programming provisions applicable to broadcasters are set forth in sections 315 and 312(a)(7) of the Communications Act of 1934, as amended (Act).⁷ Under section 315(a), if a broadcast licensee permits one legally qualified candidate for a public office to use its station, it must afford all other candidates for that office an “equal opportunity” to use the station.⁸ In addition, section 315(a) prohibits broadcast licensees from censoring candidate ads.⁹ The equal opportunities and no censorship requirements in section 315 also apply to cable system operators,¹⁰ SDARS licensees,¹¹ and DBS service providers engaged in origination

turn so vital to the proper functioning of our Republic.”) (citations omitted); *Licensee Obligations in Political Campaigns*, 14 FCC 2d 765 (1968) (“The Commission recognizes the important contribution which licensees can make to an informed electorate by contributing broadcast time to election campaigns.”). *See also* CBS v. FCC, 453 U.S. 367, 396 (1981) (stating that the reasonable access provision “make[s] a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process”).

⁶ *Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2313 (1960) (*1960 Programming Inquiry*). While the Commission in 1986 eliminated certain policies specific to false and misleading advertising, it did so in light of the general responsibility of broadcasters for all material broadcast through their facilities and the obligation they have to take all reasonable measures to eliminate any false, misleading, or deceptive matter. *In the Matter of Elimination of Unnecessary Broad. Regulation*, 57 Rad. Reg. 2d (P&F) 913 (1985) (citing *1960 Programming Inquiry*), *recon. denied*, 58 Rad. Reg. 2d (P&F) 864 (1985), *aff’d, sub nom., Telecomm Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986). *See also* *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, Docket No. 20500, 53 FCC 2d 934, 934-35, paras. 2-4 (1975) (*Licensed-Conducted Contests NPRM*) (proposing contest rules, explaining that presentation of false and misleading program material, including advertising, violates a licensee’s basic duty to deal honestly with its audience and is contrary to the public interest); Report and Order, 60 FCC 2d 1072 (1976) (*Licensed-Conducted Contests Report and Order*) (adopting a revised version of the proposed contest rules to prohibit “false, misleading, or deceptive contest descriptions”). Although the Commission’s concern with false, misleading, or deceptive matter applies broadly, our focus in the instant proceeding is on AI when used in political advertising given recent reports about its anticipated widespread use in the creation of political advertising in the current and future election cycles, and its potential harm to the electoral process. *See infra* note 45.

⁷ 47 U.S.C. §§ 312(a)(7), 315.

⁸ *Id.* § 315(a) (“If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.”). *See* 47 CFR § 73.1941.

⁹ 47 U.S.C. § 315(a) (“[S]uch licensee shall have no power of censorship over the material broadcast under the provisions of this section.”). *See* 47 CFR § 73.1941.

¹⁰ Section 315(c) of the Act defines the term “broadcasting station” as including cable television systems and the terms “licensee” and “station licensee” as including cable operators. 47 U.S.C. § 315(c) (“For purposes of this section— (1) the term ‘broadcasting station’ includes a community antenna television system; and (2) the terms ‘licensee’ and ‘station licensee’ when used with respect to a community antenna television system mean the operator of such system.”). *See* 47 CFR § 76.205.

¹¹ *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997) (extending the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees); 47 CFR § 25.702(a)-(b).

programming.¹² Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office the opportunity to purchase “reasonable amounts of time.”¹³ The reasonable access provisions of section 312(a)(7) also apply to SDARS licensees¹⁴ and DBS service providers engaged in origination programming,¹⁵ but are not applicable to cable system operators.¹⁶

5. *Political Recordkeeping Requirements.* The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago,¹⁷ and political file obligations have been embodied in section 315(e) of the Act since 2002.¹⁸ Section 315(e)(1) requires broadcast licensees to maintain and make available for public inspection information about each request for the purchase of broadcast time that is made: (a) by or on behalf of a legally qualified candidate for public office,¹⁹ or (b) by an issue advertiser whose advertisement communicates a message relating to a political matter of national importance.²⁰ It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.²¹ In addition, as the Commission has stated, “the disclosures included in the political file further

¹² See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*) (establishing rules applying the political programming rules in sections 312(a)(7) and 315 of the Act to DBS service providers, in accordance with section 335 of the Act), *recon. denied*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on Reconsideration*), *Order on Reconsideration vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte Reconsideration*); 47 CFR § 25.701(b)-(d).

¹³ 47 U.S.C. § 312(a)(7). Section 312(a)(7) states:

The Commission may revoke any station license or construction permit —

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Id. See 47 CFR § 73.1944. The reasonable access provision does not apply to candidates for state and local elective offices.

¹⁴ See *supra* note 11.

¹⁵ See *supra* note 12.

¹⁶ See *1991 Political Programming Order*, 7 FCC Rcd at 679, para. 4.

¹⁷ See 3 Fed. Reg. 1691 (1938).

¹⁸ 47 U.S.C. § 315(e). See Bipartisan Campaign Reform Act of 2002, P.L. 107-155, 116 Stat. 81 (2002).

¹⁹ 47 U.S.C. § 315(e)(1)(A); 47 CFR § 73.1943(a)(1).

²⁰ 47 U.S.C. § 315(e)(1)(B); 47 CFR § 73.1943(a)(2).

²¹ Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent’s initial “use” to request equal opportunities. 47 CFR § 73.1941(c). The term “use” means a positive, identifiable appearance by voice or likeness of a legally qualified candidate for public office, lasting four or more seconds in any program that is not exempt under section 73.1941(a)(1)-(a)(4) of the Commission’s rules. See *Codification of the Commission’s Political Programming Policies*, Memorandum Opinion and Order, 9 FCC Rcd 651 (1994); *Request by Carter/Mondale Reelection Committee, Inc. for Interpretive Ruling*, Letter Ruling, 80 FCC 2d 285 (Broadcast Bur., 1980); *Request of Oliver Products for Declaratory Ruling*, Memorandum Opinion and Order, 4 FCC Rcd 5953 (1989). The failure by a station to promptly upload information about each “use” denies requesting candidates the

(continued....)

the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy."²² Section 315(e)(2) specifies the kinds of records that must be maintained in political files,²³ and section 315(e)(3) provides that these records must be placed in the political file "as soon as possible" and retained for a period of at least two years.²⁴ The Commission has also applied political file rules to cable television system operators,²⁵ DBS providers,²⁶ and SDARS licensees engaged in origination programming.²⁷

6. *Sponsorship Identification Recordkeeping Requirements.* Pursuant to section 317 of the Act and section 73.1212 of the Commission's rules, broadcast stations are required to make on-air sponsorship identification announcements when any valuable consideration is paid or promised to them in exchange for the broadcast of program material.²⁸ Section 73.1212(e) also requires broadcast stations to comply with certain recordkeeping requirements when the material broadcast is "political matter or matter involving the discussion of a controversial issue of public importance."²⁹ Specifically, section 73.1212(e) provides, in relevant part:

notice they need to assert their statutory rights to equal opportunities in a timely manner. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535, 4562, para. 55 (2012) (*Standardized and Enhanced Disclosure Requirements*).

²² *Standardized and Enhanced Disclosure Requirements*, 27 FCC Rcd at 4543-44, para. 16.

²³ 47 U.S.C. § 315(e)(2); 47 CFR § 73.1943(b).

²⁴ 47 U.S.C. § 315(e)(3); 47 CFR § 73.1943(d).

²⁵ *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR § 76.1701.

²⁶ Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. § 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order*, 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte Reconsideration*, 19 FCC Rcd at 5561, para. 35; 47 CFR § 25.701(d).

²⁷ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-217, Report and Order, 31 FCC Rcd 526, 537-38, paras. 26-27 (2016) (*Expansion of Online Public File Obligations*); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR § 25.702(b).

²⁸ 47 U.S.C. § 317(a)(1); 47 CFR § 73.1212(a). The Commission has extended to cable television system operators engaged in origination cablecasting sponsorship identification requirements that are largely the same as those applicable to broadcasters. *See* 47 CFR § 76.1615.

²⁹ 47 CFR § 73.1212(e). Although the Commission has not specifically defined the term "political" for purposes of section 73.1212, it has stated that fact should not deter licensees from making good faith determinations in this area. *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18695, n.45 (2007) (*Sonshine*). Numerous examples of what constitutes "political matter" can be found in Commission and bureau decisions. *See, e.g., id.* at 18695, para. 17 (finding a program consisting of partisan representatives and commentators analyzing and debating various issues central to the presidential campaign then underway, as well as clips of the candidates themselves making political statements at their respective parties' conventions, to be "political matter"); *Primer, Political Broadcasting*, 100 FCC 2d 1476, 1536-37, para. 97 (1984) (stating that "political matter" includes programs that deal with "political subjects," such as when members of Congress furnish
(continued....)

Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526. Such lists shall be kept and made available for a period of two years.³⁰

The objective of the list retention requirement is to “preserv[e] the audience’s right to know by whom it is being persuaded.”³¹ The Commission has extended to cable operators that engage in origination cablecasting sponsorship identification and recordkeeping requirements that are largely the same as those applicable to broadcasters.³²

B. Other Federal and State Actions

7. The Federal Election Commission (FEC) currently is considering a petition for rulemaking filed by Public Citizen requesting that the FEC amend its rules to clarify that existing campaign law prohibiting fraudulent misrepresentation by candidates for federal office and their agents applies to deliberately deceptive AI-generated content in campaign ads or other campaign communications.³³ To date, eleven states—California, Idaho, Indiana, Michigan, Minnesota, New Mexico, Oregon, Texas, Utah, Washington, and Wisconsin—have enacted legislation regulating AI-generated “deepfakes” in political ads and other campaign communications.³⁴ In addition, similar legislation is awaiting governor signature or under consideration in 28 states.³⁵

8. We note that there are distinctions between these federal and state actions and our proposals in the instant proceeding. For example, the FEC petition for rulemaking would clarify that a prohibition on fraudulent misrepresentation in campaign ads by or on behalf of candidates for federal office applies to deceptive AI-generated content in such ads,³⁶ while our proposal would require on-air

stations with their weekly or monthly taped or filmed reports to their constituents); *Gary M. Sukow*, Letter, 36 FCC 2d 668 (Broadcast Bur. 1972) (finding that interviews with a political officeholder, whether or not in connection with a current election, constitute “political matter”). Given “the limitless number of potential controversial issues and the varying circumstances in which they might arise,” the Commission makes determinations of whether a broadcast matter involves a controversial issue of public importance on a case-by-case basis, relying heavily on licensees’ editorial judgment, and the scope of review is limited to determining whether a licensee has acted reasonably and in good faith in deciding whether material involves controversial issues of public importance. *Sonshine*, 22 FCC Rcd at 18689, para. 6.

³⁰ 47 CFR § 73.1212(e).

³¹ *Amendment of the Commission’s Sponsorship Identification Rules*, Docket No. 19513, Report and Order, 52 FCC 2d 701, 711, para. 30 (1975) (*1975 Sponsorship ID Report and Order*).

³² See 47 CFR §§ 76.1615, 76.1701(e).

³³ See 88 FR 55606 (Aug. 16, 2023). As noted in the FEC proceeding, it is considering action pursuant to its own statutory authority. This proceeding is based upon our own statutory authority, and is meant to supplement, not supersede, any future actions taken by the FEC.

³⁴ *Tracker: State Legislation on Deepfakes in Elections*, Public Citizen (updated Apr. 5, 2024) (*Tracker: State Legislation*), <https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/>.

³⁵ *Id.*

³⁶ See 88 FR 55606 (Aug. 16, 2023).

disclosures in ads by or on behalf of candidates for both federal and state offices and issue ads that contain any AI-generated content. Our proposals today are meant to complement, not replace, this effort, which has the common goal of ensuring an informed public. The final and proposed state actions vary widely,³⁷ and some explicitly exempt ads aired by broadcast stations.³⁸ Our proposed on-air disclosure requirement would ensure that broadcast stations and other affected Commission licensees and regulatees face uniform requirements.

III. DISCUSSION

A. Potential Public Interest Benefits and Harms of Using AI-Generated Content in Political Ads

9. With recent advancements and rapid growth in generative AI tools, the use of AI is expected to play a substantial role in the creation of political ads in 2024 and beyond.³⁹ We anticipate that the use of AI technologies in political ads could provide a number of benefits. The use of AI-generated content could help candidates and issue advertisers tailor their messages to specific communities.⁴⁰ For example, a campaign could use AI tools to generate messages targeted to the unique concerns of certain demographics or to produce content in the candidate's voice in multiple languages.⁴¹ AI could also help to speed up and automate the generation of political ads, enabling campaigns and issue advertisers to

³⁷ See generally Tracker: State Legislation.

³⁸ See, e.g., Cal. Assemb. B. 2355 (2023-2024), Chapter 1.5 (Cal. Stat. 2024) (exempting from compliance with the bill's AI-generated content disclosure requirements for certain political advertisements "a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast a qualified political advertisement").

³⁹ See, e.g., Adav Noti, *How Artificial Intelligence Influences Elections, And What We Can Do About It*, Campaign Legal Center (Feb. 28, 2024) (Noti, *How AI Influences Elections*), <https://campaignlegal.org/update/how-artificial-intelligence-influences-elections-and-what-we-can-do-about-it> (asserting that "2024 will be the first election year to feature the widespread influence of AI ... in the making and distribution of public messages about candidates"); Rachel Curry, *How 2024 Presidential Candidates Are Using AI Inside Their Election Campaigns*, CNBC (Dec. 17, 2023) (Curry, *How 2024 Presidential Candidates Are Using AI*), <https://www.cnbc.com/2023/12/17/how-2024-presidential-candidates-are-using-ai-in-election-campaigns.html> (asserting that "[w]ith the 2024 presidential election less than a year away, AI is already an active participant in U.S. politics, largely in government agencies and the campaigning space of elected officials."); Christina LaChappelle and Catherine Tucker, *Generative AI in Political Advertising*, Brennan Center for Justice (Nov. 28, 2023) (LaChappelle and Tucker, *Generative AI in Political Advertising*), <https://www.brennancenter.org/our-work/research-reports/generative-ai-political-advertising> (asserting that "[g]enerative AI is poised to redefine modern campaigning"); David E. Clementson, *6 Ways AI Can Make Political Campaigns More Deceptive Than Ever*, The Conversation (July 21, 2023), <https://theconversation.com/6-ways-ai-can-make-political-campaigns-more-deceptive-than-ever-209760> (asserting that "[c]ampaigns are now rapidly embracing artificial intelligence for composing and producing ads").

⁴⁰ See, e.g., Curry, *How 2024 Presidential Candidates Are Using AI* (asserting that AI has the potential to create hyper-localized, hyper-personalized political campaigns); LaChappelle and Tucker, *Generative AI in Political Advertising* (noting that AI's ability to synthesize information about a target audience and generate a persuasive message tailored to that audience's interests holds great promise for microtargeting efforts); Darrel M. West, *How AI Will Transform the 2024 Elections*, The Brookings Institution (May 3, 2023) (West, *How AI Will Transform*), <https://www.brookings.edu/articles/how-ai-will-transform-the-2024-elections/> (noting that "AI enables very precise audience targeting, which is crucial in political campaigns").

⁴¹ See, e.g., Curry, *How 2024 Presidential Candidates Are Using AI* (noting that AI could allow diverse communities to get campaign messages in their own languages); LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that AI can assist in developing and targeting messages that address the unique concerns of different voters); Antoinette Siu, *Agencies Weigh the Pros and Cons of Generative AI As Political Advertising Grows*, Digiday (Aug. 15, 2023) (Siu, *Agencies Weigh the Pros and Cons*), <https://digiday.com/media-buying/agencies-weigh-the-pros-and-cons-of-generative-ai-as-political-advertising-grows/> (stating that "AI can help political campaigns reach specific demographics with tailored messaging, maximizing the effectiveness of their ads").

create new content quickly in the final days leading up to an election.⁴² Additionally, because new AI tools are inexpensive, require little training to use, and are capable of generating a large volume of content, such tools could be valuable to smaller campaigns with limited financial resources, allowing them to reach more voters and compete more effectively with larger, well-funded campaigns.⁴³ We seek comment on other benefits that the use of AI technologies in political ads could provide.

10. The use of AI-generated content in political ads, however, also creates a potential for providing deceptive, misleading, or fraudulent information to voters. Of particular concern is the use of AI-generated “deepfakes”—altered images, videos, or audio recordings that depict people doing or saying things they did not actually do or say, or events that did not actually occur.⁴⁴ Such manipulated media could mislead the public about candidates’ assertions or positions on particular issues or about whether certain events actually happened, creating confusion and distrust among potential voters.⁴⁵ Moreover, AI tools could be used to produce convincingly false messages about where or when to cast a ballot, or to discourage voters from showing up to their polling locations.⁴⁶ To be sure, deceptive political advertising is nothing new. Even before the emergence of AI technologies, tools such as Photoshop have been used to manipulate images used in political ads.⁴⁷ The advancement and widespread availability of AI tools, however, has made it easier, faster, and less expensive to make sophisticated and realistic “deepfakes” and other manipulated media, making it increasingly more difficult for voters to discern what is real and what is fake. We seek comment on these and other potentially harmful effects of using AI-generated content in political ads. Do these potentially harmful effects support Commission intervention in order to ensure that the public is informed of the presence of AI-generated content?

⁴² See, e.g., Siu, *Agencies Weigh the Pros and Cons* (noting that AI can help speed up and automate content creation, testing, and ad generation); West, *How AI Will Transform* (noting that candidates can use generative AI to respond instantly to campaign developments).

⁴³ See, e.g., LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that the multitude of low-cost and user-friendly AI tools that require no prior knowledge of coding or machine learning can be especially helpful to smaller political campaigns with fewer financial resources); Siu, *Agencies Weigh the Pros and Cons* (asserting that AI can lower costs for campaigns and level the playing field for candidates).

⁴⁴ See, e.g., Curry, *How 2024 Presidential Candidates Are Using AI* (stating that AI is already being used to create “deepfakes” from the level of the presidential campaign to local races); LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that “[m]uch of the media debate surrounding artificial intelligence in politics focuses on AI’s potential to generate false or misleading content”).

⁴⁵ See, e.g., Noti, *How AI Influences Elections*. See also Adam Edelman, *States Are Lagging in Tackling Political Deepfakes, Leaving Potential Threats Unchecked Heading into 2024*, NBC News (Dec. 16, 2023) (noting, for example, that a deepfake could be released shortly before Election Day showing a candidate drunk, or speaking incoherently, or consorting with a disreputable figure), <https://www.nbcnews.com/politics/artificial-intelligence-deepfakes-2024-election-states-rcna129525>.

⁴⁶ See, e.g., Noti, *How AI Influences Elections*. For example, in January 2024, potential primary voters in New Hampshire received a robocall, which used an AI-generated voice that sounded like President Biden’s, telling them to stay home and “save your vote” by skipping the state’s primary. *Id.* See Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Alex Valencia, Chief Compliance Officer, Lingo Telecom, LLC (Feb. 2, 2024) (directing Lingo Telecom, the entity alleged to have originated robocall traffic using AI-generated voice cloning to spread misinformation to voters prior to New Hampshire’s primary election, to immediately cease and desist from supporting unlawful robocall traffic on its networks), <https://www.fcc.gov/document/fcc-issues-robocall-cease-and-desist-letter-lingo-telecom>. While this example involved robocalls, AI tools could be used to create similar messages for political ads aired on the radio or television.

⁴⁷ See, e.g., Daniel I. Weiner and Lawrence Nordon, *Regulating AI Deepfakes and Synthetic Media in the Political Arena*, Brennan Center for Justice (Dec. 5, 2023), <https://www.brennancenter.org/our-work/research-reports/regulating-ai-deepfakes-and-synthetic-media-political-arena> (“Doctored photos and manipulated video clips are nothing new in politics. Indeed, editing photos of one’s opponent to make them look more sinister or unappealing has become a hallmark of American campaigning.”).

B. Proposed Definition of “AI-Generated Content”

11. We seek comment on how to define “AI-generated content” for purposes of this proceeding. In general, AI can encompass a wide range of technologies and functions, and AI technologies include programs that emulate aspects of human intelligence, such as a human voice. While the Commission has not yet adopted a specific definition of “artificial intelligence,” various organizations and statutes have defined AI. In October, 2023, President Biden’s *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* drew upon a statutory definition of AI established by the National Artificial Intelligence Initiative in 2021:

The term “artificial intelligence” or “AI” has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.⁴⁸

The Defense Authorization Act of 2019 provided similar definitions of artificial intelligence, including “an artificial system designed to act rationally, including a software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communication, decision making, and acting.”⁴⁹

12. We propose to define “AI-generated content” for purposes of this proceeding as “an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual’s appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.” We believe that this definition would adequately encompass content artificially created for use in political advertising.⁵⁰ We seek comment on this proposed definition. We also invite commenters to propose alternative definitions.

C. Proposal to Require Broadcasters to Disclose Use of AI-Generated Content in Political Ads

13. We propose to require that all radio and television broadcast stations that air political ads inquire whether political ads scheduled to be aired on their stations contain AI-generated content and

⁴⁸ Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, Sec. 3(b), Oct. 30, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>. The definition of AI in the National Artificial Intelligence Initiative is codified at 15 U.S.C. § 9401(3). See Pub. L. 116–283, div. E, § 5001, 134 Stat. 4523 (2021).

⁴⁹ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 1695 (Aug. 13, 2018). In this statute, the term “artificial intelligence” is defined as follows:

- (1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.
- (2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.
- (3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.
- (4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.
- (5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communication, decision making, and acting.

⁵⁰ See *supra* paras. 9-10 (discussing some of the ways AI could be used to generate content for political ads).

provide an on-air announcement for all such ads disclosing the use of AI-generated content in the ad. We further propose to require all broadcast stations that air political ads to include in their online political files a notice disclosing the use of AI-generated content for each political ad that contains such content. As discussed above, broadcasters have an obligation under the Communications Act to operate in the public interest.⁵¹ Given the potential for AI-generated content in political ads to provide false, misleading, and/or deceptive information to the public, we seek comment on whether requiring broadcasters to disclose the use of AI-generated content in political ads is consistent with their statutory obligation to serve the public interest⁵² by ensuring that listeners and viewers have the necessary information to evaluate such ads for themselves.

14. Notably, we are not proposing to ban or restrict the use of AI-generated content in producing political ads. Instead, we are merely proposing that listeners and viewers be informed when a political ad contains such content. As we explain above, the use of AI could help political advertisers provide timely, accurate, and relevant information to potential voters, or AI tools could be used to provide potential voters misleading or deceptive information.⁵³ We believe that disclosing that a political ad contains AI-generated content could help the listening or viewing audience make informed decisions about the information in that ad. We seek comment on this view.

1. Proposal to Require Broadcasters to Inquire Whether Political Ads Contain AI-Generated Content

15. We propose to require that all broadcast stations that air political ads inquire whether political ads scheduled to be aired on their stations contain any AI-generated content, as defined in this proceeding. Under this proposal, a broadcast station would fulfill its obligation by making a simple inquiry to the person or entity making the request for the purchase of airtime as to whether a political ad includes AI-generated content, as defined herein. Specifically, a broadcast station would be required to inform the person or entity requesting airtime, at the time an agreement is reached to air a political ad, that the station is required to make an on-air disclosure for any political ad that includes such AI-generated content and inquire whether the ad does in fact include such AI-generated content. We seek comment on this proposal. Would such an inquiry be expected to identify all political ads that use AI-generated content (that is, would the person or entity making the request for airtime generally be expected to know whether the ad was created using AI-generated content)? Are there any additional or alternative actions that we should require broadcast stations to take to inquire whether a political ad uses AI-generated content? We also seek comment on how stations should go about making the inquiry. For example, should we require that the station's inquiry to the person or entity making the request for the purchase of airtime be made in writing so that there is a record of the request? What if the person or entity requesting airtime fails to respond to a station's inquiry? Should a station that makes a simple inquiry consistent with the Commission's rules be deemed to have satisfied its obligations even if there is no response to the inquiry? Additionally, there may be instances where a station is informed by a third party that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry. In these cases, should a station be required to re-inquire with the person or entity making the request for the purchase of airtime?

2. Proposal to Require Broadcasters to Make On-Air Announcement Disclosing the Use of AI-Generated Content in Political Ads

16. In cases where a political ad scheduled to be aired on a broadcast station contains AI-generated content, we propose to require the station to make an on-air announcement disclosing that the

⁵¹ See *supra* para. 3.

⁵² *Id.* See also *infra* para. 27.

⁵³ See *supra* paras. 9-10.

ad contains AI-generated content.⁵⁴ The station would be required to make the on-air announcement immediately preceding or during the broadcast of any ad by or on behalf of a legally qualified candidate for public office⁵⁵ and any issue ad⁵⁶ that contains AI-generated content. We seek comment on this proposal. We seek comment on whether a disclosure immediately preceding or during the ad would be more prominent and bring greater awareness of the fact that the ad contains AI-generated content than a disclosure immediately following the ad. Alternatively, we seek comment on whether broadcasters should be permitted to air the disclosure at any time immediately preceding, during, or immediately following the ad.

17. We further propose that broadcasters use standardized language for the on-air disclosure. For radio ads, we propose that broadcasters provide an on-air announcement orally in a voice that is clear, conspicuous, and at a speed that is understandable, stating that: “The following message contains information generated in whole or in part by artificial intelligence.” For television ads, we propose that broadcasters provide an on-air announcement immediately preceding or during the ad either (i) orally in a voice that is clear, conspicuous, and at a speed that is understandable, stating that: “The following message contains information generated in whole or in part by artificial intelligence” or “This message contains information generated in whole or in part by artificial intelligence,”; or (ii) visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds, stating that: “The following message contains information generated in whole or in part by artificial intelligence” or “This message contains information generated in whole or in part by artificial intelligence.” To the extent that we conclude that broadcasters should have the option to air the disclosure immediately following the ad, this language could be modified as appropriate to state: “The preceding message contains information generated in whole or in part by artificial intelligence.” We seek comment on the proposal to require standardized language and on the specific language that we have proposed. Is the proposed language sufficient to inform listeners and viewers that an ad’s content may require further evaluation to determine whether it contains misleading or inaccurate information? Should the disclosure be in English, in the primary language of the broadcast if other than English, or both? Should television broadcasters have the option to make the on-air disclosure either orally or visually, or should they be required to make the disclosure both orally and visually to ensure that it is accessible to individuals with visual or hearing impairments? In instances where a simple inquiry to the candidate or other entity requesting airtime reveals that there is no AI-generated content in a political ad, the broadcaster would not be required to make any on-air disclosure. However, we seek comment on the appropriate actions for stations to take in cases where a station is informed by a credible third party⁵⁷ that a political ad contains AI-generated content where there was no previous affirmative response to the station’s inquiry or the station received a negative response to its inquiry. In these circumstances, should a station be required to follow up with the purchaser of the ad and/or insert the required disclosure? We note that candidate ads are already required

⁵⁴ As noted above, section 315(a) of the Communications Act prohibits broadcast stations from censoring candidate ads. However, there is prior Bureau-level precedent that indicates “content-neutral disclaimers” in candidate ads are permissible and do not violate the no censorship provisions in section 315(a). See *South Arkansas Radio Co.*, Notice of Apparent Liability for Forfeiture, 5 FCC Rcd 4643, 4644 (MB 1990). We tentatively conclude that “content-neutral disclaimers,” including the disclaimers proposed in this NPRM, are consistent with section 315(a) and do not constitute censorship. We seek comment on this tentative conclusion.

⁵⁵ 47 CFR § 73.1940.

⁵⁶ As noted in note 4, *supra*, for purposes of the proposed rules, we propose to define the term “issue ad” as “paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office.” See also Proposed Rules App. A, § 73.1945(b), *supra*. We seek comment on this proposed definition.

⁵⁷ A “credible third party” could, for example, be defined to include the individual depicted in the advertisement or an individual officially associated with the event depicted in the advertisement. We seek comment on other third parties who would likely be able to provide credible information as to whether a political ad contains AI-generated content.

to include an on-air disclosure that the candidate has approved the ad.⁵⁸ We seek comment on where the proposed on-air disclosure regarding AI-generated content would be placed in the audio or video feed relative to the existing disclosure.

3. Proposal to Require Broadcasters to Include in Their Political Files a Notice Disclosing Use of AI-Generated Content in Political Ads

18. We also propose to require all broadcast stations to include in their online political files a notice disclosing the use of AI-generated content for each political ad that contains such content. Under this proposal, broadcasters would include a notice for each political ad that contains AI-generated content using the same standardized language discussed above: “This message contains information generated in whole or in part by artificial intelligence.” We seek comment on this proposal. We believe that this requirement would help to foster greater transparency regarding the use of AI-generated content in political ads by, for example, allowing listeners, viewers, and other interested parties to confirm which ads aired by a station contained AI-generated content. Nevertheless, we seek comment on whether it would be sufficient for the broadcaster to provide only an on-air disclosure.

19. We also seek comment on whether notices of AI-generated content included in broadcasters’ political file would be “data assets” potentially subject to the requirements of the OPEN Government Data Act. The OPEN Government Data Act,⁵⁹ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” i.e., in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.⁶⁰ This requirement is to be implemented “in accordance with guidance by the Director” of the OMB.⁶¹

20. We tentatively conclude that notices of AI-generated content included in broadcasters’ political files would not constitute “data assets” as defined in 44 U.S.C. § 3502(17). A “data asset” is defined as “a collection of data elements or data sets that may be grouped together,”⁶² and “data” as “recorded information, regardless of form or the media on which the data is recorded.”⁶³ Each AI-generated content notice, however, is separate and distinct from one another and the information contained in the political files generally is unstructured rather than systematically arranged in a table or database, such that the information could not readily be grouped together in any meaningful way. We tentatively conclude therefore that, in the absence of a standardized collection form, the proposed AI-generated content notices would not constitute a “data asset” subject to the requirements of the OPEN Government Data Act. We seek comment on this tentative conclusion.

4. Applicability of Proposed Disclosure Requirements to Political Ads Embedded in Network or Syndicated Programming

21. We seek comment on whether and how the proposed on-air and political file disclosure requirements should be applied to a candidate or issue ad that is embedded within a network or syndicated program aired by a broadcast station. We note that in instances where a political ad is embedded in network or syndicated programming, a broadcast station airing the programming would not have direct contact with the person or entity requesting to purchase airtime from the network or syndication company

⁵⁸ 47 U.S.C. § 315(b)(2)(C), (D).

⁵⁹ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

⁶⁰ 44 U.S.C. § 3502(20), (22) (definitions of “open Government data asset” and “public data asset”); *id.* § 3506(b)(6)(B) (public availability).

⁶¹ OMB has not yet issued final guidance.

⁶² 44 U.S.C. § 3502(17).

⁶³ *Id.* § 3502(16).

for the political ad. In such cases, how does a broadcast station airing the network or syndicated programming currently comply with its obligations under the political programming and political file rules? Does the network or syndication company generally inform the broadcast stations airing the programming, at some point prior to the scheduled broadcast date, that a particular program includes a political ad? Should we require broadcast stations to make a simple inquiry to the respective network or syndication company, at the time the network or syndication company informs the stations airing the programming that a political ad is embedded in a particular program, whether the ad contains AI-generated content? Alternatively, should we allow broadcast stations to make a simple inquiry of their network and syndication partners at specified intervals (e.g., annually or at the start of each television season) requesting that the network or syndication company inform the stations each time that a political ad embedded within a program contains AI-generated content, prior to the airing of that program? Would the network or syndication company be expected to know if a political ad embedded within its programming contains AI-generated content? If a simple inquiry to the network or syndication company is unlikely to reveal whether political ads embedded in network and syndicated programming contain AI-generated content, should we exempt broadcast stations from complying with the proposed on-air and political file disclosure requirements with respect to political ads embedded in network or syndicated programming? In cases where a station is informed by a credible third party⁶⁴ that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry, should a station be required to insert the required disclosure? To the extent that a simple inquiry to a network or syndication company can be expected to reveal whether political ads embedded in network or syndicated programming contain AI-generated content, would it be technically feasible or practical for the stations to insert an on-air announcement disclosing that such ads contain AI-generated content in the network or syndicated programming? If not, should we exempt stations from complying with the proposed on-air disclosure requirement but nevertheless require that the stations comply with the proposed political file disclosure requirement?

D. Extension of Proposals to Cable Operators, DBS Providers, and SDARS Licensees That Engage in Origination Programming

22. We propose to extend the proposals for broadcast stations discussed herein to cable operators, DBS providers, and SDARS licensees engaged in origination programming. As discussed above, "origination cablecasting" is "[p]rogramming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator."⁶⁵ Similarly, "DBS origination programming" is "programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider."⁶⁶ We note that the Commission's rules do not have a Commission definition of "SDARS origination programming." We propose to amend the rules by adding a definition of to define "SDARS origination programming" as "programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee." We seek comment on this proposal. Cable operators, DBS providers, and SDARS licensees engaged in origination programming are subject to certain public interest obligations, including political programming and political file requirements.⁶⁷ We tentatively conclude that the same public interest justifications that support the proposed rules for broadcast stations apply equally to cable operators, DBS providers, and SDARS licensees engaged in origination programming. We seek comment on this tentative conclusion.

23. Consistent with our broadcast station proposals, cable operators, DBS providers, and SDARS licensees, when engaged in origination programming, would be required to inquire whether

⁶⁴ See *supra* note 57.

⁶⁵ 47 CFR § 76.5(p).

⁶⁶ *Id.* § 25.701(b)(2).

⁶⁷ See *supra* paras. 4-6.

political ads scheduled to be aired on their systems or facilities contain any AI-generated content and provide an on-air announcement for all such ads disclosing the use of AI-generated content in the ad.⁶⁸ We also propose to use the same standardized language for disclosure of AI-generated content in political ads as proposed for broadcast stations.⁶⁹ Further, we propose to require these entities to include in their political files a notice disclosing the use of AI-generated content in political ads they air.⁷⁰ We seek comment on application of these proposals to cable operators, DBS providers, and SDARS licensees engaged in origination programming.

E. Extension of Proposals to Section 325(c) Permit Holders

24. We further propose to extend the on-air disclosure proposed in this proceeding to political ads broadcast pursuant to a section 325(c) permit.⁷¹ A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the foreign station with a sufficient transmission power or a geographic location that enables the material to be received consistently in the United States.⁷² Section 325(c) permit applications are subject to the requirements of section 309 (applicable to applications for U.S. station licenses).⁷³ Specifically, the Commission applies “the same criteria for meeting the programming standards component of the public interest, convenience, and necessity requirement to both a domestic license proceeding under section 309 and a cross-border broadcast license proceeding under section 325.”⁷⁴

25. Consistent with our proposals for U.S.-licensed broadcast stations, we propose to require section 325(c) permit holders to inquire whether political ads scheduled to be delivered from their U.S. studio to a non-U.S. broadcast station contain any AI-generated content and provide an on-air notice for all such ads disclosing the use of AI-generated content in the ad.⁷⁵ We propose to use the same standardized language for on-air notices as proposed for U.S.-licensed broadcast stations. We seek

⁶⁸ See *supra* paras. 15-16.

⁶⁹ See *supra* para. 17.

⁷⁰ See *supra* paras. 18.

⁷¹ 47 U.S.C. § 325(c). Section 325(c) of the Act states that “No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.” *Id.*

⁷² *Wrather—Alvarez Broadcasting, Inc. v. F.C.C.*, 248 F.2d 646, 651 (D.C. Cir. 1957). See also Remote Control Border Stations: Hearing before the Comm. on Merchant Marine, Radio, and Fisheries at 7, 14, 73d Cong. 2 (1934) (Statement of C. B. Jolliffe, Chief Engineer Federal Radio Commission).

⁷³ 47 U.S.C. § 325(d).

⁷⁴ *Application of Fox Television Stations, Inc.*, FCC Docket No. 96-434, Memorandum Opinion and Order, 11 FCC Rcd 14870, 14877, para. 21 (1996) (*Fox II*), *aff’d sub nom. Radio Television S.A. de C.V. v. FCC*, 130 F.3d 1078 (D.C. Cir. 1997) (quoting *Channel 51 of San Diego, Inc. v. FCC*, 79 F3d 1187, 1189 (D.C. Cir. 1996) (*Channel 51*)). See also S. Rep. No. 73-319, at 1085 (1934) (stating that the Commission is authorized to grant permits to those who operate in the public interest).

⁷⁵ See *supra* paras. 15-16.

comment on these proposals. In addition, we seek comment on whether any of our proposals should be modified for section 325(c) permit holders.⁷⁶

26. We tentatively conclude that applying the same on-air disclosure requirements proposed in this proceeding for U.S.-licensed stations to section 325(c) permit holders would serve the public interest because, like programming from a U.S.-licensed station, programming transmitted or delivered by a section 325(c) permit holder is received by audiences in the United States. Thus, the obligation to serve the public interest by taking responsibility for material—including false, misleading or deceptive material—disseminated to the public through their facilities applies equally to section 325(c) permit holders. We seek comment on our tentative conclusion.

F. Statutory Authority

27. We seek comment on whether the Commission has the authority to adopt the proposed on-air disclosure and political file requirements for AI-generated content in political ads. Section 303(r) authorizes the Commission, as “public convenience, interest, or necessity requires, . . . to make such regulation and prescribe such restrictions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . .”⁷⁷ The Commission has relied on its authority under section 303(r) to develop rules necessary to the public interest.⁷⁸ For example, the Commission relied on section 303(r), among other general provisions of the Act, to adopt contest rules, explaining that the presentation of false and misleading program material, including advertising, violates a licensee’s basic duty to deal honestly with its audience and is contrary to the public interest.⁷⁹ The confines of a Title III licensee’s duty are set by the general standard “the public interest, convenience or necessity,”⁸⁰ and thus the Commission also has

⁷⁶ Because section 325(c) permit holders are not required to maintain a public inspection file, we seek comment on whether permit holders should be required to include a notice disclosing the use of AI-generated content in political ads they air in the International Communications Filing System in the relevant section 325(c) permit file, in addition to on-air disclosure of such content.

⁷⁷ 47 U.S.C. § 303(r).

⁷⁸ See, e.g., *Children’s Television Report and Policy Statement*, 50 FCC 2d 1 (1974/1994) (using its general authority over television in section 303(r) to adopt a policy statement restricting advertising in children’s television programs prior to the passage of the Children’s Television Act of 1990). The Commission has also used its general rulemaking powers in section 303(r) to adopt broadcast ownership restrictions. See *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (affirming the FCC’s newspaper/broadcasting cross-ownership ban as properly based on the “public interest standard” under section 303(r)); *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956) (sustaining under section 303(r) the FCC’s multiple-ownership rules placing limitations on the total number of stations in each broadcast service a person may own or control); *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943) (sustaining under section 303(r) regulations prohibiting broadcast networks from owning more than one AM radio station in the same community, and from owning any standard broadcast station in any locality where the existing standard broadcast stations are so few that competition would be substantially restrained by such licensing); *Office of Communications of the United Church of Christ v. FCC*, 560 F.2d 529 (2d Cir. 1977) (concluding that although EEO enforcement is not in the Commission’s statutory mission, the Commission possesses the power “to issue such regulations in furtherance of its statutory mandate to ensure that broadcasters serve all segments of the community”).

⁷⁹ *Licensee-Conducted Contests NPRM*, 53 FCC 2d at 935, para. 6 (citing sections 4(i), 303(f) and 303(r) as authority for adopting the proposed contest rules); *Licensee-Conducted Contests Report and Order*, 60 FCC 2d at 1073 (adopting contest rules).

⁸⁰ 47 U.S.C. §§ 307(a), 309(a).

authority under various sections of the Act, including sections 307(a),⁸¹ 309(a),⁸² 309(k)(1)(a),⁸³ and 335 (for DBS providers)⁸⁴ to enact rules in the public interest. We seek comment on whether these provisions authorize us to require broadcasters, SDARS licensees and DBS providers engaged in origination programming, and section 325(c) permit holders to make the proposed on-air and political file disclosures regarding AI-generated content in political ads. In this regard, broadcasters, and SDARS licensees and DBS providers engaged in origination programming, are subject to statutory provisions and the Commission's rules governing political programming and recordkeeping, the fundamental purpose of which is to foster an informed electorate.⁸⁵ Are the proposed on-air disclosure and political file requirements necessary to ensure broadcasters and other regulated entities take reasonable measures to address false, misleading, or deceptive material and to ensure that voters have the information needed to assess the reliability and credibility of political ads in order to make informed decisions and therefore would serve the public interest? Are there other statutory provisions, such as sections 303(b),⁸⁶ 315,⁸⁷ 317,⁸⁸ or others, that would support adoption of the proposed on-air disclosure and political file requirements for broadcasters, SDARS licensees and DBS providers engaged in origination programming?

28. We note that cable operators engaged in origination programming are not subject to the Commission's rulemaking authority under section 303(r). We seek comment on whether there are other statutory provisions, such as sections 315⁸⁹ or others, that would support adoption of the proposed on-air disclosure and political file requirements for cable operators engaged in origination programming. Section 315 of the Act imposes on broadcast licensees and cable operators⁹⁰ certain programming obligations with respect to candidate ads⁹¹ and recordkeeping obligations with respect to both candidate and certain issue ads,⁹² and these obligations have been extended to DBS providers⁹³ and SDARS

⁸¹ *Id.* § 307(a) (authorizing the Commission to grant licenses if the public interest, convenience, or necessity will be served).

⁸² *Id.* § 309(a) (directing the Commission to determine whether the public interest, convenience, or necessity will be served by granting license applications).

⁸³ *Id.* § 309(k)(1)(A) (directing the Commission to grant a broadcast station renewal application if it finds that, during the preceding term, the station has served the public interest, convenience, and necessity).

⁸⁴ *Id.* § 335 (directing the Commission to impose on DBS providers public interest or other requirements for providing video programming). *See supra* note 30.

⁸⁵ *See supra* paras. 4-5.

⁸⁶ 47 U.S.C. § 303(b) (requiring the Commission as the “public convenience, interest, or necessity requires” to “[p]rescribe the nature of the service to be rendered” by station licensees).

⁸⁷ *Id.* § 315.

⁸⁸ *Id.* § 317 (on air disclosure requirements for paid programming, political programs, or any program involving the discussion of any controversial issue).

⁸⁹ 47 U.S.C. § 315.

⁹⁰ As noted above, section 315(c) of the Act defines the term “broadcasting station” as including cable television systems and the terms “licensee” and “station licensee” as including cable operators. 47 U.S.C. § 315(c) (“For purposes of this section— (1) the term ‘broadcasting station’ includes a community antenna television system; and (2) the terms ‘licensee’ and ‘station licensee’ when used with respect to a community antenna television system mean the operator of such system.”).

⁹¹ *See supra* para. 4.

⁹² *See supra* para. 5.

⁹³ *See supra* note 11.

licensees.⁹⁴ Section 315(d) of the Act authorizes the Commission to “prescribe appropriate rules and regulations to carry out the provisions of this section” and section 315(e) imposes certain political record keeping requirements.⁹⁵ We seek comment on whether the proposed on-air disclosure and political file requirements are within the Commission’s authority under sections 315(d) and/or 315(e). Given that section 315 imposes specific programming obligations only with respect to candidate ads, and not issue ads, does that suggest that this section provides authority to adopt the proposed on-air disclosure requirements only for candidate ads? Alternatively, would the same rationale for adopting the proposed on-air disclosure requirements for candidate ads also justify adopting the proposed disclosure requirements for issue ads?⁹⁶

G. First Amendment Issues

29. We seek comment on whether the proposed rules raise First Amendment concerns, including those pertaining to broadcasters and cable operators, DBS providers, and SDARS licensees that engage in origination cablecasting. To the extent that our proposed rules implicate regulated entities’ First Amendment right to free speech, we note there are various levels of constitutional scrutiny that might apply. For example, content neutral restrictions⁹⁷ on broadcasters are subject to review under “heightened rational basis,” and will be upheld if reasonably tailored to satisfy a substantial government interest.⁹⁸ If the proposed rules are not considered content-neutral restrictions, then, with respect to broadcasters, the disclosure requirements will be reviewed under intermediate scrutiny, the less rigorous standard applied to content-based restrictions on that medium.⁹⁹ Under the intermediate scrutiny test, restrictions are upheld when the government advances “important governmental interests unrelated to the suppression of free speech” and does not “burden substantially more speech than necessary to further those interests.”¹⁰⁰ If strict scrutiny applies, the disclosure requirements will be upheld if the government’s interest is “compelling,” and the rules are both “narrowly tailored” to further that interest

⁹⁴ See *supra* note 12.

⁹⁵ 47 U.S.C. § 315(d).

⁹⁶ We also note that section 4(i) of the Act authorizes the Commission 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.” 47 U.S.C. § 154(i). We seek comment on whether this provision would support adoption of the proposed on-air disclosure and political file requirements for cable operators engaged in origination programming. In particular, would the proposed on-air disclosure and political file requirements be reasonably ancillary to the Commission’s performance of its statutorily mandated political programming and recordkeeping responsibilities?

⁹⁷ For example, the proposed on-air disclosure and political file requirements do not ban political ads that contain AI-generated content nor do they prohibit participation in public discussion; rather, the proposed rules would merely require a factual statement indicating that the ad contains information generated in part using artificial intelligence. See *Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (defining “content-neutral” speech regulations as “those that are justified without reference to the content of the regulated speech”).

⁹⁸ *Ruggiero v. FCC*, 317 F.3d 239, 247 (D.C. Cir. 2003) (en banc) (explaining that this standard represents a middle ground “between ...minimal scrutiny and intermediate scrutiny”).

⁹⁹ See *FCC v. League of Women Voters*, 468 U.S. 364, 380-81 (1984) (invalidating under the First Amendment a statute forbidding any non-commercial educational station that receives a grant from the Corporation for Public Broadcasting to “engage in editorializing”) (*League of Women Voters*). While a content-based regulation of speech is typically subject to strict scrutiny, the Supreme Court has described First Amendment review of broadcast regulation as “less rigorous” than in other contexts based on the spectrum scarcity rationale. See *Turner Broadcasting System Inc. v. FCC*, 512 U.S. 622, 637 (1984) (*Turner*) (citing *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388-89 (1969)). See also *League of Women Voters*, 468 U.S. at 377 (“our cases have taught that, given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public by presenting ‘those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves’”) (quoting *Red Lion*, 395 U.S. at 389).

¹⁰⁰ See *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997); *Turner*, 512 U.S. at 637.

and the “least restrictive means” of accomplishing the desired objective.¹⁰¹ We tentatively conclude that the proposed on-air disclosure and political file requirements comport with the First Amendment right to free speech, regardless which level of scrutiny applies. We seek comment on this tentative conclusion.

30. *Government interest.* We tentatively conclude that the Commission has a compelling interest in providing greater transparency regarding the use of AI-generated content in political advertising. As we explain above, the Commission has long recognized that broadcasters must assume responsibility for all material which is broadcast through their facilities and must take reasonable measure to address any false, misleading, or deceptive matter.¹⁰² In addition, at the very heart of the political programming and recordkeeping requirements enacted by Congress and implemented by the Commission is a recognition of the critical role that political programming plays in fostering an informed electorate.¹⁰³ The need for transparency about the use of AI-generated content is particularly pronounced when political ads intended to influence voters are involved. Recent advancements in generative AI technologies have led to their widespread use, and AI is expected to play a growing role in the future production of political ads.¹⁰⁴ While the use of AI technologies to create political ads may provide benefits,¹⁰⁵ it can also result in the dissemination of deceptive, misleading, or fraudulent information to voters.¹⁰⁶

31. As set forth above, the proposed on-air disclosure and political file requirements would further the government interest in ensuring that broadcasters and other program distributors fulfill their responsibilities regarding the material which they relay through their facilities and take reasonable measures to address potentially false, misleading, or deceptive material and ensuring that the public has the information they need to make informed decisions about the political ads that are carried. Disclosing the use of AI-generated content in political ads is vital to ensuring that the public can assess the substance and credibility of the information they receive. Rather than abridging the free speech rights of broadcasters and cable operators, DBS providers, and SDARS licensees that engage in origination programming, the proposed on-air disclosure and political file rules would further the goals of the First Amendment and Communication Act by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading, or deceptive political advertising and enhancing the public’s ability to evaluate political ads, thus promoting an informed electorate and improving the quality of public discourse. We tentatively conclude that this interest is sufficient to satisfy any standard of First Amendment review that may apply. We seek comment on this analysis.

32. *Tailoring.* We tentatively conclude that the proposed rules are appropriately tailored to serve the government interest. The proposed rules would require the disclosure of any political ad that uses artificial intelligence, defined as “an image, audio, or video generated using computational technology or other machine-based system that depicts an individual’s appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.” Since broadcasters and other affected Commission licensees and regulatees would be required to make on-air and political file disclosures only in instances where the ad contains content meeting this definition, and would be allowed to rely on the information provided to them by the person or entity making the request for the purchase of airtime, any administrative burden would be modest. Accordingly, we tentatively conclude that the proposed rules are appropriately tailored to meet any standard that might apply. We seek comment on this analysis.

33. *The Means Chosen to Accomplish the Government’s Objective.* We also tentatively

¹⁰¹ See *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813 (2000).

¹⁰² See *supra* para. 3.

¹⁰³ See *id.*

¹⁰⁴ See *supra* para. 9.

¹⁰⁵ See *id.*

¹⁰⁶ See *supra* para. 10.

conclude that the means chosen to accomplish the government's objective would meet any standard of First Amendment review that might apply. Our proposed on-air disclosure and political file requirements would not prevent or inhibit the airing of political ads, i.e., these requirements would not prevent anyone from speaking.¹⁰⁷ Rather, these requirements would promote the goals of the First Amendment and the Communications Act by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading, or deceptive material and enhancing the public's ability to assess the substance and reliability of political ads, thus fostering an informed electorate and improving the quality of public discourse. As the Court has previously concluded, "disclosure is a less restrictive alternative to more comprehensive regulations of speech."¹⁰⁸ Broadcasters and cable operators, DBS providers, and SDARS licensees engaged in origination programming would have the modest burdens of inquiring of the ad sponsor whether the political ad scheduled to be aired contains an AI-generated content and, if it does, making on-air and political file disclosures. For this reason, we anticipate our proposed rules would have little if any impact on the decision to accept political ads containing AI-generated content as compared to other ads. We seek comment on this analysis.

34. In addition, we tentatively conclude that the analysis provided here applies equally to those operating pursuant to section 325(c) permits, because as described in section III.E above, there is nothing to differentiate them from other broadcast licensees when it comes to political programming requirements, and the governmental interest and effects on speech are the same as to content transmitted by U.S.-licensed broadcasters and content transmitted by section 325(c) permittees over the facilities of a non-U.S. broadcaster.

35. We also tentatively conclude that the proposed on-air and political file disclosures would not violate the First Amendment rights of the candidates or other entities that sponsor political ads. As set forth in detail above, these proposed rules would further the government's compelling interest in providing greater transparency regarding the use of AI-generated content in political advertising, ensuring that voters have the information they need to make informed decisions about the political ads that are carried on broadcast stations and other affected facilities.¹⁰⁹ Additionally, we tentatively conclude that the proposed rules are appropriately tailored to serve this interest. When purchasing airtime, broadcasters or other regulated entities would simply ask candidates and other entities that sponsor ads whether their ad was created using AI-generated content. If the answer is yes, then the broadcaster or regulated entity would add the necessary disclosure. Our proposed definition of AI-generated content is straightforward and simple to apply. Thus, the administrative burden would be modest. Finally, we tentatively conclude that the means chosen to achieve the government's objective would satisfy First Amendment review. The proposed rules would not suppress speech by preventing or inhibiting candidates and other entities that sponsor political ads from using artificial intelligence to produce their ads. Rather, the proposed disclosure requirements would promote the goals of the First Amendment by enhancing the public's ability to evaluate the substance and reliability of political ads, thus fostering an informed electorate and improving the quality of public discourse. As we noted above, the Court has previously concluded that "disclosure is a less restrictive alternative to more comprehensive regulations of speech."¹¹⁰ We seek comment on this analysis.

H. Cost-Benefit Analysis

36. We seek comment on the costs and benefits of our proposed rules on broadcasters, cable operators, DBS providers, and SDARS licensees that engage in origination programming, and section 325(c) permit holders, particularly those that are small entities. We tentatively conclude that requiring

¹⁰⁷ See *supra* para. 14 (emphasizing that we are not proposing to ban or restrict the use of AI-generated content in producing political ads).

¹⁰⁸ *Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310, 369 (2010) (*Citizens United*).

¹⁰⁹ See *supra* paras. 30-31.

¹¹⁰ *Citizens United*, 558 U.S. at 369.

these entities to make a simple inquiry to the candidate or other entity that requests airtime as to whether a political ad contains AI-generated content would not impose a significant burden on these entities. In this regard, we expect that the candidate or other entity that requests airtime generally would be aware whether or not a particular ad contains AI-generated content. We also tentatively conclude the proposed rules would benefit the public by providing greater transparency regarding the use of AI-generated content in political ads, while imposing a modest burden on the affected entities (i.e., the burden of making a simple inquiry as to the use of AI-generated content and making an on-air disclosure and/or including a notice in the political file). We seek comment on these tentative conclusions and on other potential benefits and costs of the proposed rules. The benefits and costs of our rules for disclosing AI-generated content depend on the share of political advertisements for which such disclosure would plausibly be required. We thus seek estimates of the share of political advertisement for which disclosure of AI-generated would be required. We also seek comment on the cost to the affected entities of airtime for on-air disclosures aired prior to a political ad (i.e., airtime that could otherwise be sold to other advertisers). Given that candidate ads are already required to include an on-air disclosure that the candidate has approved the ad,¹¹¹ we seek comment on any burden associated with requiring two on-air disclosures in a single candidate ad. In addition, we request comment on whether there are any alternative actions we should take to minimize any burdens on affected entities, particularly on small entities. For example, should we limit the proposed on-air disclosure and political file requirements to political ads aired in the 60-day period leading up to a primary election and the 90-day period leading up to a general election? Would it significantly reduce burdens on small entities to require only an on-air disclosure informing the public of the use of AI-generated content, and not a separate notice in the online political file?

37. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,¹¹² 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 considerations¹¹³ and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how any Commission actions taken to address the use of AI in political advertising may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

IV. PROCEDURAL MATTERS

38. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹¹⁴ 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

¹¹¹ See *supra* para. 17.

¹¹² Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹¹³ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

¹¹⁴ 47 CFR §§ 1.1200 *et seq.*

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.

39. *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.
 - 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-19.¹¹⁵

40. *Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹¹⁶ 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."¹¹⁷ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating

¹¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹¹⁶ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601, *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹¹⁷ *Id.* § 605(b).

them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.¹¹⁸

41. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), 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.

42. *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.

43. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.¹¹⁹

44. *Additional Information.* For additional information on this proceeding, please contact Kathy Berthot of the Media Bureau's Policy Division at Kathy.Berthot@fcc.gov or (202) 418-7454.

V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335, this Notice of Proposed Rulemaking **IS ADOPTED**.

46. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking in MB Docket No. 24-211 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.

47. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹⁸ *See* 5 U.S.C. § 603(a).

¹¹⁹ *Id.* § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Proposed Rules

REVISIONS ARE SHOWN WITH BOLD AND STRIKEOUTS

The Federal Communications Commission proposes to amend Parts 25, 73, and 76 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 25 — SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

2. Amend § 25.701 by adding new paragraph (b)(5), renumbering paragraph (d)(4) as paragraph (d)(5), and adding new paragraph (d)(4) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(b)(5) *Disclosure of Artificial Intelligence-Generated Content in Political Advertising.*

(i) Artificial intelligence-generated content is defined for purposes of this section as set forth in § 73.1945(a) of this chapter.

(ii) Political advertising is defined for purposes of this section as set forth in § 73.1945(b) of this chapter.

(iii) Each DBS provider engaged in origination programming must inquire whether any political advertising scheduled to be aired on its facilities contains any artificial intelligence-generated content. Such inquiry shall be made, in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the DBS provider's facilities.

(iv) If a DBS provider's inquiry pursuant to paragraph (iii) of this section finds that any political advertising scheduled to be aired on its facilities contains any artificial intelligence-generated content, the DBS provider must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." The on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

* * * * *

(d) *Political file.*

* * * * *

(4) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a DBS provider engaged in origination program to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the DBS provider shall place in the

online political file a notice stating that “This message contains information generated in whole or in part by artificial intelligence.”

(5) * * *

* * * * *

(3) Amend § 25.702 by revising paragraph (a), , renumbering paragraph (b)(4) as (b)(5), and adding new paragraph (b)(4) to read as follows:

§ 25.702 Other SDARS Public interest obligations.

(a) Political broadcasting requirements. The following political broadcasting rules shall apply to all SDARS licensees: 47 CFR 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), and 73.1944 (Reasonable access), and **73.1945 (Disclosure of Artificial Intelligence-Generated Content in Political Advertising)**. “SDARS origination programming” is defined to mean “programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee.”

(b) *Political file.*

* * * * *

(4) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a SDARS licensee engaged in origination program to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the SDARS licensee shall place in the online political file a notice stating that “This message contains information generated in whole or in part by artificial intelligence.”

(5) * * *

* * * * *

PART 73 — RADIO BROADCAST SERVICES

4. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

5. Amend § 73.1943 by renumbering paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 73.1943 Political File.

(d) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by the licensee’s inquiry to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the licensee shall place in the online political file a notice stating that “This message contains information generated in whole or in part by artificial intelligence.”

(e) * * *

* * * * *

6. Add a new § 73.1945 to read as follows:

§ 73.1945 Disclosure of Artificial Intelligence-Generated Content in Political Advertising.

(a) **Artificial Intelligence-Generated Content** is defined for purposes of this section as an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.

(b) **Political advertising** is defined for purposes of this section as (1) advertising that is made by or on behalf of a legally qualified candidate for public office; or (2) issue advertising. **Issue advertising** is defined for purposes of this section as paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office.

(c) Each licensee must inquire whether any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content. Such inquiry shall be made in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the station.

(d) If a licensee's inquiry pursuant to paragraph (c) of this section finds that any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content, the licensee must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." For radio stations, the on-air announcement must be provided orally in a voice that is clear, conspicuous, and at a speed that is understandable. For television stations, the on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

* * * * *

PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

7. 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, 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.

8. Add a new § 76.207 to read as follows:

§ 76.207 Disclosure of Artificial Intelligence-Generated Content in Political Advertising.

(a) **Artificial Intelligence-Generated Content** is defined for purposes of this section as an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.

(b) Political advertising is defined for purposes of this section as (1) advertising that is made by or on behalf of a legally qualified candidate for public office; or (2) issue advertising. Issue advertising is defined for purposes of this section as paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office.

(c) Each cable television system operator must inquire whether any political advertising scheduled to be aired on its system contains any artificial intelligence-generated content. Such inquiry shall be made in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the system.

(d) If a cable television system operator's inquiry pursuant to paragraph (c) of this section finds that any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content, the operator must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." The on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

* * * * *

9. Amend § 76.1701 by renumbering paragraphs (d) and (e) as (e) and (f) and adding new paragraph (d) to read as follows:

§ 76.1701 Political File.

* * * * *

(d) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a cable operator engaged in origination cablecasting to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the cable operator shall place in the online political file a notice stating that "This message contains information generated in whole or in part by artificial intelligence."

(e) * * *

(f) * * *

* * * *

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rule changes proposed in the *Notice of Proposed Rulemaking (NPRM)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The presentation of political programming has long been recognized as an essential element of broadcasters' obligation to serve the public interest because of the critical role such programming plays in fostering an informed electorate, which in turn is vital to the effective operation of the democratic process.⁴ The political programming and recordkeeping requirements established by Congress and implemented by the Commission ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and foster transparency about the entities that sponsor political ads.

3. The use of emerging artificial intelligence (AI) technologies in political ads can serve the public interest in fostering an informed electorate by, for example, allowing candidates to tailor their messages to specific populations or empowering smaller political campaigns with limited financial resources to reach larger audiences. The use of AI technologies in political advertising, however, also has the potential to produce "deepfakes" and other deceptive and misleading information, creating confusion among the voting public. Accordingly the Commission initiates the *NPRM* to further the public interest by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading or deceptive material and promoting an informed electorate.

4. The *NPRM* proposes to define "AI-generated content" for purposes of this proceeding as "an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors." The *NPRM* also proposes to require that all radio and television broadcast stations inquire whether political ads scheduled to be aired on their stations contain any AI-generated content and make an on-air announcement for all such ads disclosing the use of AI-generated content in the ad. Under this proposal, broadcast stations would fulfill their obligation by making a

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ See, e.g., *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968) ("In short, the presentation of political broadcasts, while only one of many elements of service to the public, is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate—in turn so vital to the proper functioning of our Republic.") (citations omitted); *Licensee Obligations in Political Campaigns*, 14 FCC 2d 765 (1968) ("The Commission recognizes the important contribution which licensees can make to an informed electorate by contributing broadcast time to election campaigns."). See also *CBS v. FCC*, 453 U.S. 367, 396 (1981) (stating that the reasonable access provision "make a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.").

simple inquiry to the person or entity that submits the request for the purchase of airtime as to whether a political ad includes AI-generated content. Further, the *NPRM* proposes to require that broadcasters make the on-air disclosure at the beginning of or during the ad and use standardized language for the disclosure and to require broadcast stations to include in their online political files a notice, using standardized language, disclosing the use of AI-generated content for each political ad that contains such content. Moreover, the *NPRM* proposes to extend these proposed on-air disclosure and political file requirements to cable operators, DBS providers, and SDARS licensees engaged in origination programming and to permit holders transmitting programming pursuant to section 325(c) of the Act.⁵ The *NPRM* does not propose to ban or otherwise restrict the use of AI-generated content in political ads. Instead, it merely seeks to ensure that the listening and viewing public is informed when political ads include such content.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 4(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA).⁸ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

7. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.¹⁰ Based on industry data, there are about 420 cable companies in the U.S.¹¹ Of these, only seven have more than 400,000 subscribers.¹² In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹³ Based on industry data, there are about 4,139 cable systems (headends) in

⁵ 47 U.S.C. § 325(c).

⁶ 5 U.S.C. § 603(b)(3).

⁷ See *id.* § 601(6).

⁸ See *id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ 47 CFR § 76.901(d).

¹¹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹² 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).

¹³ 47 CFR § 76.901(c).

the U.S.¹⁴ Of these, about 639 have more than 15,000 subscribers.¹⁵ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁶ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹⁷ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹⁸ 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.¹⁹ 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.

9. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.²⁰ Transmission facilities may be based on a single technology or combination of technologies.²¹ 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

¹⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

¹⁶ 47 U.S.C. § 543(m)(2).

¹⁷ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 *Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

¹⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹⁹ 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).

²⁰ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²¹ *Id.*

wired broadband Internet services.²² By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²³

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁴ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.²⁵ Of this number, 2,964 firms operated with fewer than 250 employees.²⁶ 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.²⁷ 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.

11. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”²⁸ Programming may originate in their own studio, from an affiliated network, or from external sources.²⁹ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.³⁰ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.³¹ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.³² Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

²² 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).

²³ *Id.*

²⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁵ 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>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁷ 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).

²⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “515112 Radio Stations,” <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²⁹ *Id.*

³⁰ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFI, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFI&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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 (continued....)

12. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations.³³ Of this total, 11,088 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 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed noncommercial (NCE) FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters.³⁴ 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.

13. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations³⁵ 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.

14. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."³⁶ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁷ 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.³⁸ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

that 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.

³³ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

³⁴ *Id.*

³⁵ "[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).

³⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "515120 Television Broadcasting," <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

³⁷ *Id.*

³⁸ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.³⁹ Of that number, 657 firms had revenue of less than \$25,000,000.⁴⁰ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

15. As of March 31, 2024, there were 1,382 licensed commercial television stations.⁴¹ Of this total, 1,263 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2024, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 LPTV stations and 3,118 TV translator stations.⁴² 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.

16. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁴³ 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.⁴⁴ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁶

17. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁷ U.S. Census Bureau data for 2017 show that there

³⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴¹ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

⁴² *Id.*

⁴³ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 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.

⁴⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.⁴⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁹ 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.⁵⁰ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The rule changes proposed in the *NPRM*, if adopted, would impose compliance and recordkeeping obligations on small, as well as other entities. Specifically, the *NPRM* proposes to require broadcast stations, cable operators, SDARS licensees, and DBS providers engaged in origination programming, and section 325(c) permit holders, to make a simple inquiry to the candidate or other entity that requests airtime as to whether a political ad contains AI-generated content and provide on-air disclosures informing listeners and viewers that such ads contain AI-generated content. The *NPRM* further proposes to require that broadcast stations, and cable operators, SDARS licensees, and DBS providers engaged in origination programming, include a notice in their online political files for all political ads that include AI-generated content disclosing that the ad contains such content.

19. At this time the record does not include sufficient cost/benefit analyses to allow the Commission to quantify the costs of compliance for small entities including whether it will be necessary for small entities to hire professionals to comply with the proposed rules if adopted. The Commission expects, however, that the proposed rules would impose only a modest burden on the affected entities (i.e., the burden of making a simple inquiry as to the use of AI-generated content and making an on-air disclosure and/or including a notice in the political file), because the candidates or entities requesting airtime should be aware of whether the ad which they seek to have aired contains AI-generated content. The *NPRM* nevertheless seeks comment, particularly for small entities, on the costs and burdens of the proposed rules and whether there are any actions it should take to minimize any burdens on small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁵²

⁴⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁴⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁰ 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>

⁵¹ *Id.*

⁵² 5 U.S.C. § 603(c)(1)-(c)(4).

21. An alternative option that may reduce burdens on small entities considered in the *NPRM* is whether to limit the proposed on-air disclosure and political file requirements to political ads aired in the 60-day period leading up to a primary election and the 90-day period leading up to a general election. The *NPRM* also considers whether requiring *only* an on-air disclosure informing the public of the use of AI-generated content, and not a separate notice in the online political file, would significantly reduce burdens on small entities. To assist in its evaluation of the economic impact of the proposed rules on small entities, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the compliance and recordkeeping requirements described above can be minimized for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *NPRM* and this IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

22. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

Artificial Intelligence has become powerful enough to mimic human voices and create life-like images.

This year in the primary election in New Hampshire, thousands of voters got an AI-generated robocall impersonating President Biden that told them not to vote.

This past summer, the campaign of Governor DeSantis was flagged for circulating fake AI-altered images of former President Trump.

Facing a rising tide of disinformation, roughly three-quarters of Americans say they are concerned about misleading AI-generated content. That's why the Federal Communications Commission is focused on delivering on a simple standard that is grounded in a key principle of democracy—transparency.

Today the FCC takes a major step to guard against AI being used by bad actors to spread chaos and confusion in our elections. We propose that political advertisements that run on television and radio should disclose whether AI is being used. If a candidate or issue campaign used AI to create an ad, the public has a right to know.

Voters deserve to know if the voices and images in political commercials are authentic or if they have been manipulated. To be clear, we make no judgment on the content being shared or prevent it from airing. This is not about telling the public what is true and what is false. It is about empowering every voter, viewer, and listener to make their own choices.

Some dispute the power granted by Congress to this agency to oversee the political messages they see on television, hear over the radio, or receive over the phone. They are wrong. Since the 1930s, the FCC has used this authority to require our nation's broadcasters to maintain a publicly available file for campaign ads. This file has information about who bought a campaign ad, how much they paid for it, and when it ran. Over time Congress expanded these requirements to include ads run on cable and satellite, too. These are also the policies that led to what are now familiar on-air disclosures so that every viewer and listener knows who is responsible for the ad.

While obfuscating may delay action in Washington, states across the country are not waiting. Nearly half of the States in this country have enacted laws to regulate the use of AI technology in elections. Most of these laws are bipartisan. And while those actions may not cover all aspects of how this technology may be used in our elections, they understand the urgency of the moment we are in and the need to start somewhere. We can help bring uniformity and stability to the patchwork of state laws on AI technology and deepfakes seeking to bring greater transparency in our elections.

The Federal Elections Commission is also considering a rulemaking on AI, announcing this year that they expect to act in early Summer. I welcome that upcoming announcement. With our complementary authorities, the FEC can regulate AI use in online advertisements for federal candidates while the FCC can focus on the areas where the FEC is powerless to act. The FEC does not oversee television and radio stations. Moreover under the law FEC authority over campaigns is limited to federal political candidates and does not extend to independent issue campaigns or State and local elections. These gaping loopholes can be addressed by the FCC.

There's too much potential for AI to manipulate voices and images in political advertising to do nothing. At the very least, the public deserves the chance to weigh in and offer solutions about the best way this agency can utilize its existing authority to increase transparency and build consumer trust.

If the voices and images we see in political ads are altered by AI, the public should know that. For political ads on television and radio, the FCC's new disclosure rules would make sure that they will.

**STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING**

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

The Democratic National Committee (DNC) is now working to change the rules of the road in the run-up to the 2024 election.¹ It has done so by calling on the administrative state to impose new controls on political speech before voters hit the ballot boxes this fall. The FCC proposal adopted today echoes that DNC-backed initiative and would impose new regulations on the use of AI-generated political speech at the eleventh hour. This push for new regulations comes on the heels of press reports that the DNC and Democrat candidates are “nervous about not keeping up with the GOP in embracing” artificial intelligence technologies in this election cycle.²

The FCC’s attempt to fundamentally alter the regulation of political speech just a short time before a national election is as misguided as it is unlawful.

That is why you have seen the Chairman of the Federal Election Commission (FEC) warn the FCC that its proposed regulations “would fall within the exclusive jurisdiction of the [FEC], directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election.”³ That is why you have seen leaders in the Senate write in opposition, stating that the FCC “has no authority to police the content of political advertising and any attempt to do so raises serious statutory and constitutional concerns.”⁴ And that is why you have seen legislation introduced to block the FCC from moving forward.⁵

Those concerns are well founded. We are in the home stretch of a national election. We are so close, in fact, that the comment cycle in this proceeding will still be open in September—the same month when early voting starts in states across the country. If there ever were a moment, if there ever were a time, for a federal agency to show restraint when it comes to the regulation of political speech and to ensure that it is operating within the statutorily defined bounds of its authority, now would be that time.

¹ See Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen’s petition to regulate AI-based political speech), <https://sers.fec.gov/fosers/showpdf.htm?docid=423822>; see also Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), <https://sers.fec.gov/fosers/showpdf.htm?docid=423502>.

² See Courtney Subramanian, *Nervous About Falling Behind the GOP, Democrats Are Wrestling With How To Use AI*, Associated Press (May 6, 2024) (“Scarred by the memories of 2016, the Biden campaign, Democratic candidates and progressives are wrestling with the power of artificial intelligence and nervous about not keeping up with the GOP in embracing the technology, according to interviews with consultants and strategists.”), <https://apnews.com/article/ai-biden-campaign-democrats-2024-election-520f22de269ba1eff24d1544ca38d569>; see also Dan Merica, *Democrats Wanted an Agreement on Using Artificial Intelligence. It went Nowhere*, Associated Press (June 2, 2025), <https://apnews.com/article/artificial-intelligence-ai-dnc-campaign-2024-republicans-7c6b78b6a8ded9ad253be9ef491e0284>.

³ Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), <https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessica-Rosenworcel.pdf>.

⁴ See Letter from John Thune, Mitch McConnell, Eric S. Schmitt, & Ted Cruz, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), https://www.thune.senate.gov/public/_cache/files/f6d3f136-5e2e-42d6-a979-6a943dd06162/16768AD893634C882D27CE35E1D5FAE5.06.06.24-letter-to-chairwoman-rosenworcel-re-ai-and-political-ads.pdf.

⁵ Ending FCC Meddling In Our Elections Act, 118th Cong. 2d (2024), <https://www.lee.senate.gov/services/files/1326B89B-5136-47CD-A020-44EE088EAAC1>.

Yet today, the FCC’s proposal throws prudence to the wind. In this Notice of Proposed Rulemaking, the agency *begins* a rulemaking to require disclosures for so-called “AI-generated content” in political advertisements on legacy television and radio, as well as some cable and satellite offerings. The FCC has stated its intent to complete this rulemaking before Election Day.

This is a recipe for chaos. Even if this rulemaking were completed with unprecedented haste, any new regulations would likely take effect after early voting already started. And the FCC can only muddy the waters. Suddenly, Americans will see disclosures for “AI-generated content” on some screens but not others, for some political ads but not others, with no context for why they see these disclosures or which part of the political advertisement contains AI. Far from promoting transparency, the FCC’s proposed rules would mire voters in confusion, create a patchwork of inconsistent rules, and encourage monied, partisan interests to weaponize the law for electoral advantage.

I dissent.

* * *

Let’s start with the law. Congress gave the Federal Election Commission—not the FCC—the exclusive statutory authority to interpret, administer, and enforce the Federal Election Campaign Act.⁶ That includes the authority to establish disclosures for political communications on television and radio.⁷ The courts have recognized the FEC’s unique authority to regulate political disclosures, even when other agencies attempt to circumvent or supplement its rules, concluding that “the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers” for political communications.⁸

Here, the FEC is actively considering the very issues implicated by the FCC’s proposal, and legislators in Congress are as well. Indeed, a DNC-backed petition has asked the FEC to impose new regulations on AI-generated political speech—a proposal that mirrors the FCC’s proposal here—before voters hit the ballot boxes this fall.⁹ As noted above, the FEC Chairman warned weeks ago that the publicized portions of the FCC’s proposal would countermand the FEC’s exclusive jurisdiction, “directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election.”¹⁰

That is because Congress has not given the FCC the type of freewheeling authority over these issues that would be necessary to turn this plan into law. Under the Communications Act, the FCC’s authority over candidate ads is limited to ensuring that broadcasters provide candidates equal access, document those ads in the stations’ public file, and disclose the ads’ sponsors.¹¹ And even where the FCC has authority (as in the case of sponsorship identification), it cannot force broadcasters to undertake a

⁶ 52 U.S.C. § 30106(b). *See also* *FEC v. NRA Political Victory Fund*, 513 U.S. 537, 539 (1994).

⁷ *See* 52 U.S.C. § 30120.

⁸ *Galliano v. United States Postal Service*, 836 F.2d 1362, 1368–70 (D.C. Cir. 1988) (holding that the U.S. Postal Service may not impose its own disclaimer requirements on mailers soliciting political contributions).

⁹ *See* Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), <https://sers.fec.gov/fosers/showpdf.htm?docid=423502>; Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen’s petition to regulate AI-based political speech), <https://sers.fec.gov/fosers/showpdf.htm?docid=423822>.

¹⁰ Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), <https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessica-Rosenworcel.pdf>.

¹¹ 47 U.S.C. §§ 315, 317.

roving investigation into the truth or falsity of the disclosure.¹² Likewise, the Bipartisan Campaign Reform Act merely requires the FCC to compile information on electioneering communications that the FEC may regulate.¹³

While the FCC cites to these laws as evidence that it can act here, the opposite is true. By enacting these narrow laws and only authorizing the FCC to act in specific circumstances, Congress limited the FCC's role over political ads to targeted matters. And these narrow laws, in turn, foreclose the FCC's attempt to expand its power by pointing to its generic statutory authority to regulate radio communications.¹⁴ In short, none of the laws cited in the FCC's proposal vest this agency with the sweeping authority it claims over political speech, and the FCC will receive no deference for its novel interpretation of the Communications Act following the Supreme Court's decision in *Loper Bright v. Raimondo*.

And this should not go overlooked: in grasping for authority, the FCC breathes new life into sweeping, decades-old agency precedents that are far from limited to disclosure requirements. In particular, the agency's decision reaches back to a policy statement from the 1960s that announced the FCC's expectation for broadcasters to "take all reasonable measures to eliminate any false, misleading, or deceptive matter" on penalty of license revocation.¹⁵ In other words, the authority the FCC claims today is one that, by its own terms, would empower the FCC to operate as the nation's speech police.

At the same time, the FCC does not explain how its proposal to impose liability on broadcasters for airing covered political ads without a disclosure can be squared with broadcasters' federal obligation to run them. Under the Communications Act, broadcasters must provide candidates "equal opportunities" for airtime and may not exercise the "power of censorship" over this political content.¹⁶ That provision has not only been read by courts as immunizing broadcasters from liability for candidates' speech (including speech that allegedly defames other candidates),¹⁷ but it prevents the FCC from allowing broadcasters to refuse running politically disfavored speech.¹⁸ As the FCC recognized 40 years ago: "A station may not refuse to broadcast a candidate's program on the ground[s] that it contains libelous remarks, even though no opposing candidates have made broadcasts."¹⁹ If today's FCC intends for stations to deny candidates access for failure to reveal the scope and scale of AI-generated content, it is not clear how the Communications Act would permit it.

Nor does the FCC's decision clear basic APA hurdles. As the Supreme Court has made clear, an administrative rule is arbitrary and capricious when the agency has "entirely failed to consider an important aspect of the problem."²⁰ The FCC has done precisely that here. Specifically, the Vice Chair of the FEC wrote a letter to the FCC, indicating that the FCC and FEC should move forward in a

¹² *NAB v. FCC*, 39 F.4th 817 (D.C. Cir. 2022).

¹³ Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, title II, § 201(b), 116 Stat. 90 (2002).

¹⁴ 47 U.S.C. § 303(r).

¹⁵ NPRM at para. 3 & n.6 (May 22, 2024) (citing *Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2313 (1960)).

¹⁶ 47 U.S.C. § 315.

¹⁷ *KENS-TV, Inc. v. Farias*, No. 04-07-00170-CV, 2007 WL 2253502 (Tex. App. Aug. 8, 2007).

¹⁸ *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).

¹⁹ Federal Communications Commission, *The Law of Political Broadcasting and Cablecasting: A Political Primer*, 100 FCC.2d 1476, 1984 WL 251279, at *37 (1984 ed.).

²⁰ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

complementary way.²¹ Yet there is no indication in the proposal today that the FCC has sought comment in this document on how the FCC can move forward in light of the FEC's views and in a manner that complements that agency's efforts. Failure to create APA notice to consider this aspect of AI regulation is a problem for the FCC.

* * *

Undaunted, the FCC insists that its proposal merely seeks comment on transparency and disclosure obligations. That claim is not credible—in fact, it is incredible.

For starters, the FCC is wading into an area rife with politicization. It is not difficult to see how partisan interests might weaponize the FCC's rules during an election season. For example, the NPRM asks about legally obligating stations to take corrective action when they are informed by a “credible third party” that a political ad has AI-generated content. What is a “credible third party,” you might ask? Is it the person being depicted? Is it a self-appointed “expert” on “misinformation” or “disinformation”? The NPRM does not say. I sure hope it is not the Orwellian-named NewsGuard²² or Global Alliance for Responsible Media.²³

But I will go out on a limb and predict that these “credible third parties,” whoever they are, will not be disinterested observers without skin in the game. They will be about as objective and non-partisan as the self-appointed “fact checkers” that have been working to safeguard political narratives.

The FCC's proposal will invite highly motivated politicians to file a flood of complaints alleging “AI-generated content,” not for the sake of the truth, but as a cudgel to chill opponents' speech. The FCC should not be offering itself up as a political football just as the big game is kicking off.

Finally, as discussed above, the FCC's proposal rests on the sweeping—and unprecedented—theory that the FCC is justified in regulating on-air content whenever it believes people might be misled. It is a theory with no limiting principle. Why stop at AI? Why stop at political ads? Why stop at disclosures? Indeed, one might wonder what would prevent the FCC from using the theory advanced by the agency in this NPRM from policing all manners of broadcast content. Today's decision, for its part, is curiously silent on this issue.

* * *

There is no doubt that the increase in AI-generated political content presents complex questions, and there is bipartisan concern about the potential for misuse. That is precisely why the FEC, and others are actively looking at these issues. By contrast, the FCC can only muddy the waters and thumb the scales by interjecting at the last moment before an election.

Is the government really worried that voters will find these political ads misleading in the absence of a regulator's guiding hand? Or is the government worried that voters might find these ads effective?

²¹ See Letter from Ellen L. Weintraub, Vice Chair Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), <https://www.fec.gov/resources/cms-content/documents/Weintraub-Letter-to-Chairwoman-Rosenworcel-June-6-2024.pdf>.

²² See generally Press Release, *Comer Probes NewsGuard's Impact on Protected First Amendment Speech* (June 13, 2024), <https://oversight.house.gov/release/comer-probes-newsguards-impact-on-protected-first-amendment-speech-government-contracts%E2%82%AC%99%E2%82%AC/>.

²³ See Brent Scher, *GARM Exposed: House Judiciary Report Says Ad Coalition Likely Broke Law To Silence Conservatives*, House Committee on the Judiciary (July 10, 2024), <https://judiciary.house.gov/media/in-the-news/garm-exposed-house-judiciary-report-says-ad-coalition-likely-broke-law-silence>.

Imagine going after President Lyndon Johnson for his 1964 “Daisy Girl” ad because voters might think that the child actually died in a nuclear strike.

The more likely scenario is that FCC-mandated disclosures will themselves prove misleading. Consider a recent example. This June, the New York Times criticized videos depicting President Biden’s physical frailties as “cheap fakes” that “misled” the public.²⁴ Fast forward a few weeks, after the first presidential debate took place, and now that same outlet claims that the same video provides compelling evidence of President Biden’s physical and cognitive decline.²⁵ To be sure, this example was not alleged to involve AI-generated content, but the principle is all the same.

Indeed, the agency’s plan fails to identify an administrable path forward. It is just straight into the thicket. What does it mean to have “AI-generated content” in a political ad? Is it everything? Is it nothing? The NPRM proposes to cover any “image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual’s appearance, speech, or conduct, or an event, circumstance, or situation.”²⁶

That standard is no standard at all—and, in fact, it highlights the FCC’s utter lack of institutional expertise to deal with these issues, especially in this rushed manner. It would be difficult, in this day and age, to imagine an advertisement (political or not) that does *not* use a “computational technology” to “depict” an “event, circumstance, or situation.” Partisan interests will undoubtedly complain that any ad contains “AI-generated content”—whether CGI, image cropping, or tools to amplify the quality of a person’s voice. And lawyers will undoubtedly end up telling their clients to just go ahead and slap a prophylactic, government-mandated disclosure on all political ads going forward just to avoid liability. Whether deepfake, cheap fake, or none of the above, viewers will see these disclosures and have no more insight about what parts of the ad uses AI and which parts do not.

The FCC’s involvement can only amplify that confusion. The FCC is legally powerless to adopt uniform rules in a technologically neutral fashion. Its legal authority claimed here extends only to legacy media—broadcast, cable, and satellite television—but not over-the-top content, like online streaming video and social media, where millions of Americans see political ads. As a result, AI-generated political ads that run on traditional TV and radio will come with a government-mandated disclaimer but the exact same ad that runs on a streaming service or social media site would not.

I don’t see how this type of conflicting patchwork could end well. Consumers don’t think about the content they consume through the lens of regulatory silos. They just view content on screens. Will they conclude that the absence of a government warning on an online ad means that the content must be real? And applying new regulations on the broadcasters the FCC regulates but not on their largely unregulated online competitors only exacerbates regulatory asymmetries.

And that’s not the end of it. Applying new regulations to candidate ads and issue ads but not to other forms of political speech just means that the government will be favoring one set of speakers over another. All of this confirms that the FCC is not the right entity to consider these issues.

* * *

²⁴ Katie Glueck *et al.*, *How Misleading Videos Are Trailing Biden As He Battles Age Doubts*, New York Times (June 21, 2024).

²⁵ Peter Baker *et al.*, *Biden’s Lapses Are Said to Be Increasingly Common and Worrisome*, New York Times (July 2, 2024).

²⁶ NPRM at para. 12.

The type of government intervention envisioned by this plan would only do more harm than good. I dissent.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

Generative artificial intelligence is certainly a buzzy topic. But, absent the compelling force of an ongoing crisis or a situation worsening moment-to-moment, the worst time to regulate a domain is when everyone is talking about it. As I mentioned a year ago during the FCC's Artificial Intelligence workshop:

[L]et us not cast about for regulatory solutions to problems that do not exist; remedies that may, as yet, be worse than the disease. While machine learning technologies have existed for various decisioning and ranking applications for decades, so-called generative artificial intelligence somehow feels importantly different to us. Scoring and ranking feels different when the output is a Mars sunset, a weird Balenciaga advertising parody, or a limerick. But it might be a difference in degree rather than in kind. I can't say for sure that I know yet. I don't think Sam Altman knows. I'm not even sure that Fei-Fei Li or Yann LeCun knows. And, at any rate, even if we should be led by caution in the absence of information, it is not clear to me that a rush to occupy the regulatory field is tantamount to caution. Of expert consensus and public policy implementation, there is many a slip twixt cup and lip.

From a policy perspective, I worry that this item is one such slip. And while we ought not cry over spilled milk, better not to spill in the first place. Yes, sure: in an ideal world, Americans would be informed about what they're seeing, and whether what they're seeing is a likeness generated by artificial intelligence intended to mislead them. This item, if implemented, *might* accomplish that for a small subset of *possibly* misleading advertisements. That *is* a valid policy desideratum. But *how* does the item accomplish it? By implementing a requirement that broadcasters seek and obtain a certification from the provider of a political advertisement regarding whether the ad is generated by artificial intelligence, and a disclosure of the same when the ad plays. Let's talk about each of these elements.

First: the item represents a requirement on broadcasters (yes, MVPDs engaged in 'origination programming' are also notionally obligated—no, that is not a particularly broad class of programming), rather than online platforms. Broadcasters are already burdened with a raft of regulatory compliance requirements, and any additional such requirements must, at this point, be justified by dire and immediate social exigency on a par with simultaneous global volcanic eruption or islands of unknown origin rising from the ocean. We are not at that level yet (most uses of generative artificial intelligence in the political context have been, so far, obvious memes), but let us stipulate to it *arguendo*. Would the proposed regulation serve the policy goal of protecting the American public? Political candidates and other purchasers of legitimate political advertisement, together with broadcasters, are groups that are fairly strongly incented *not* to get caught using generative artificial intelligence to create fake political ads; and, *pace* Governor DeSantis, are the ones likeliest to be exposed for having done so. It would seem to me that viral videos shared in the *unregulated* space of social media by unaccountable entities will be the setting for the moving action of this story.

Second: generated by artificial intelligence. What is 'artificial intelligence' in this context? Don't get me wrong: this item takes a serious stab at defining the term, and it draws on other serious attempts to do so for inspiration. There is some important line-drawing here. Yet a *lot* of photo, video, and audio editing and engineering software uses "computational technology or other machine-based system" to modify the "depict[ion of] an individual's appearance, speech, or conduct, or an event, circumstance, or situation[.]" A *lot*. Like, *all* of it. Given the threat of penalties (not to mention losing

the trust of viewers), will broadcasters and political advertisers alike have reason to be *overinclusive* in their disclosures? Absolutely. Consider the possibility that a consensus might emerge directly contrary to the intended one. Why would political advertisers not just say: let's just label most, or *every*, ad as generated by artificial intelligence, quickly relegating any such disclosure to a psychological status in the mind of the average American on a par with rapid-fire legalese played at the end of an ad or EULA click-wrap? Or, consider further! Suppose I am a political advertiser managing both a broadcast and digital advertising campaign, and the *same* ads are appearing to the *same* viewers—sometimes placed on a broadcast network, sometimes digitally—and *some* of those same ads have an artificial intelligence disclosure, and some do not. Is that not likely to create confusion? Maybe even mistrust? And, if so, to sidestep that mistrust entirely, maybe I don't run some of my ads—the ones required to be labeled as generated by artificial intelligence—on broadcast networks. Maybe I don't run any on broadcast networks at all.

Okay, that may be a bit of catastrophizing: I don't think political spend on broadcast will decline as a result of these new requirements. But what these requirements *do* is provide yet another small reason to shift programming to online and streaming platforms and away from the regulated space of broadcast. That secular trend is happening anyway, and I don't think the occasion warrants additional burden. Atlantis, to my knowledge, remains beneath the waves.

Third: a disclosure when the ad plays. We've been talking policy, but now let's talk about our statute. Our authority to accomplish this regulation doesn't exist. We are relying on Section 303(r), which provides that the Commission may, as “public convenience, interest, or necessity requires, . . . [] make such regulation and prescribe such restrictions, not inconsistent with law, as may be necessary to carry out the provisions of this Act[.]” Okay. This regulation isn't necessary to “carry out the provisions of this Act.” We then go on to note that we have used Section 303(r) to act in the past. Well, all right. What 303(r) precedent justifies today's proposal? We cite the adoption of a policy statement regarding children's programming immediately before the 1990 adoption of the Children's Television Act (policy statements, while generally influential in the Commission's thinking, are not rules) and a raft of broadcast ownership restrictions. Among the several nominally precedential broadcast ownership restrictions, we cite the cross-ownership rule. That feels bizarre to me, akin to pointing to a concussion we got on the bunny hill as evidence that we are allowed to ski. Suffice it to say, I think that this cited authority is fairly weak tea, and that the ancient social conditions occasioning broadcast ownership restrictions (which, of course, no longer obtain) were far more real than the speculative harms associated with today's proposal.

We also ask whether Section 315, which authorizes the Commission to require broadcasters to maintain a political file and implement political advertising carriage requirements, might also support our effort. Suffice it to say, I am a skeptic that the carriage and political file rules in our Act—none of which mention authority to require disclosures of the sort contemplated here—authorize the step we take today. And 315(b)(2)(C), the “nearest neighbor” (apologies—we are discussing artificial intelligence, after all) to the disclosure rules proposed today, just does not apply. And I am not the only skeptic! As Sean Cooksey, Chairman of the Federal Elections Commission (FEC), recently noted in a letter to Chairwoman Rosenworcel:

Indeed, federal courts of appeals have upheld the FEC's unique authority to regulate political disclaimers against other agencies' attempts to circumvent or supplement our rules, concluding that “the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers” for political communications. Consequently, I maintain that the FCC lacks the legal authority to promulgate conflicting disclaimers requirements only for political communications.

(Citation omitted.) Chairman Cooksey goes on to provide that the FEC is engaged in its own rulemaking

contemplating the regulation of artificial intelligence in political communications. Why risk stepping in front of an ongoing rulemaking of a sister agency, addressing squarely the same question, over that agency's objection, relying on uncertain authority? I worry that the answer must be political.

The rules this item proposes threaten simultaneously to accomplish too much and not enough, leaning all the while on irrelevant or weak authority, in direct defiance of a sister agency's legitimate concerns. I have no choice but to dissent.

**STATEMENT OF
COMMISSIONER ANNA GOMEZ**

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

This order initiates a proceeding to consider providing greater transparency regarding the use of AI-generated content in political advertising.

There is no getting around the fact that AI has fast become an integral element of almost every business, including advertising. Political and issue advertisements can be a critical channel for political candidates and other stakeholders to share their message with the listening and viewing public and thus an important form of civic engagement as citizens seek to understand the issues and discern the facts most important to their lives.

In this Notice of Proposed Rulemaking we propose a transparency measure and ask a lot of questions, both about what precisely requires disclosure and the level of burden we place on broadcasters to implement these requirements. What this proceeding does not do is propose a restriction or ban on the use of AI-generated content in political ads. The purpose is to make certain that listeners and viewers are informed when political ads include such content.

I look forward to the development of a robust record as we consider this complex issue.

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

In the Matter of)
)
Addressing the Homework Gap through the E-Rate) WC Docket No. 21-31
Program)

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 18, 2024

Released: July 29, 2024

Comment Date: [45 days after date of publication in the *Federal Register*]

Reply Comment Date: [75 days after date of publication in the *Federal Register*]

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements;
Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. Technology has become an integral part of the modern classroom and receiving an education, especially in the recent past, and the barrier to accessing such technology puts individuals at a significant disadvantage to their peers and often prevents educators from being able to teach. In this Report and Order and Further Notice of Proposed Rulemaking, we take steps to modernize the E-Rate program to meet the evolving needs of schools and libraries around the country by allowing for the distribution of Wi-Fi hotspots and services to students, school staff, and library patrons for off-premises use.

2. Since its inception more than 25 years ago, the Federal Communications Commission's (Commission) E-Rate program has supported high-speed, affordable Internet services to and within school and library buildings, and has been instrumental in providing students, school staff, and library patrons with access to the essential broadband services that are required for next-generation learning.¹ Recognizing our responsibility to ensure the E-Rate program evolves with the educational needs of students and library patrons, the Commission has frequently modernized the program to reflect the changes in education and technology, including by providing more equitable access to funding for Wi-Fi networks in schools and libraries.² Recently we have seen significant advances in technology that have changed not only the way schools and libraries provide educational resources, but also the way students, school staff, and library patrons access such resources. In particular, an Internet connection has become an essential requirement for learners to access tasks that are vital to obtaining an education, including homework assignments, online classes, library materials, continuing education, and career and government applications.

3. The need for Internet connectivity beyond the campus boundaries was further underscored by nationwide school and library closures beginning in 2020 as a result of the COVID-19 pandemic, when most educational activities were unexpectedly forced to shift online overnight. During this time, thanks to the creativity and resourcefulness of schools and libraries around the country, many students, school staff, and library patrons that would have been caught on the wrong side of the digital divide or the "Homework Gap"—i.e., students unable to fully participate in educational opportunities because they lack broadband connectivity in their homes—were able to obtain a broadband connection provided by their local school or library. Many schools and libraries used funding provided through the congressionally-appropriated Emergency Connectivity Fund (ECF) program to purchase connected devices, Wi-Fi hotspot devices, broadband connections, and other eligible equipment and services for students, school staff, and library patrons in need, to use at a variety of locations, including locations other than schools and libraries, during the pandemic.³ Notably, schools and libraries found success in establishing ECF-funded Wi-Fi hotspot lending programs to provide the hotspot equipment and monthly mobile wireless broadband services needed to connect individuals who otherwise lacked the Internet access needed to fully participate in remote learning.⁴

¹ The E-Rate program is formally known as the schools and libraries universal service support mechanism.

² See generally *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*First 2014 E-Rate Order*).

³ See 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); *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 or ECF Order*) (establishing the Emergency Connectivity Fund program to distribute funding to help schools and libraries provide devices and connectivity needed to engage in remote learning during the pandemic).

⁴ See, e.g., Associated Press, *Mississippi County Offering Hotspot Devices for Free* (Feb. 12, 2022), <https://www.usnews.com/news/best-states/mississippi/articles/2022-02-12/mississippi-county-offering-hotspot-devices-for-free> (using ECF funding to purchase 2,000 hotspots that will be available for checkout to residents using their library cards and reporting that only 68% of the Jones County residents have access to the Internet and the
(continued....)

4. Even with schools and libraries reopening and returning to in-person instruction, the need for Internet connections outside of the school or library buildings to fully engage in education remains, and schools and libraries are seeking to continue funding these valuable lending programs to keep their students, school staff, and library patrons connected. That is why today we adapt the E-Rate program to recognize these needs. Building on our experiences in the ECF program and the comments we received in response to the *Notice of Proposed Rulemaking (NPRM)*,⁵ we adopt a budget mechanism to allow for the equitable distribution of Wi-Fi hotspots and services to students, school staff, and library patrons. These rules are intended to be another step in updating the E-Rate program to reflect the realities of many schools and libraries by lending Wi-Fi hotspots and services through community and school libraries across the country so that students, school staff, and library patrons with the greatest need can be connected and learn without limits. We also adopt a Further Notice of Proposed Rulemaking (*FNPRM*) to seek comment on additional ways to ensure the continued success of such Wi-Fi hotspot lending programs funded through the E-Rate program.

II. BACKGROUND

5. *E-Rate Program.* The E-Rate program was authorized by Congress as part of the Telecommunications Act of 1996, and created by the Commission in 1997, as a universal service support mechanism to ensure the delivery of affordable telecommunications and information services to eligible schools and libraries.⁶ Under the E-Rate program, eligible schools, libraries, and consortia comprised of eligible schools and libraries may request universal service discounts for eligible services and/or equipment (collectively, eligible services). Eligible services are divided into “category one” services (which provide connectivity, including broadband connectivity, to eligible locations) and “category two” services (which provide connectivity within eligible locations).⁷ Category one services generally include data transmission and Internet access services, while category two services include internal connections (e.g., wireless access points, routers, switches), managed internal broadband services (e.g., managed Wi-Fi), and basic maintenance of internal connections.⁸ The E-Rate program currently supports wireless Internet services for use at a school or library only in limited circumstances.⁹

hotspots will benefit families that are under-served); Tom Matthews, *One-Third of Worcester Students Have No Internet at Home, but COVID Relief Funds Provide Opportunity to Boost Broadband Access, Worcester Regional Research Bureau Report Reveals* (Apr. 28, 2022), <https://www.masslive.com/worcester/2022/04/one-third-of-worcester-students-have-no-internet-at-home-but-covid-relief-funds-provide-opportunity-boost-broadband-access-worcester-regional-research-bureau-report-reveals.html> (purchasing 7,700 Wi-Fi hotspots with ECF support to provide to Worcester Public Schools students without consistent Internet connections at home and noting that additional budget resources will be necessary to support the initiative after the emergency relief funding ends); see also *infra* notes 41-43, 72-75.

⁵ See generally *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking, FCC 23-91, 2023 WL 8602208 (Nov. 8, 2023) (*Notice of Proposed Rulemaking* or *NPRM*).

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*) (Communications Act).

⁷ See 47 CFR §§ 54.501, 54.502.

⁸ 47 CFR § 54.502(a)(1)-(2).

⁹ In 2014, the Commission found that individual data plans for mobile devices are generally not cost-effective when those users already have access to the Internet through internal wireless broadband networks on wireless-enabled devices within a school or library without the help of stand-alone data plans. See *First 2014 E-Rate Order*, 29 FCC Rcd at 8932-34, paras. 151-53; *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, 15601, para. 158 (2014) (*Second 2014 E-Rate Order*). However, recognizing that there could be locales where wireless local-area networks (WLANs) could be impracticable (e.g., bookmobiles) or difficult to install or there may be some schools or libraries where installation of a wireless network would be possible but more costly than individual data plans, the Commission allows applicants to seek funding for individual data plans only if the school

(continued....)

6. Section 254(h)(1)(B) of the Communications Act of 1934, as amended (Communications Act) provides that E-Rate discounts be applied to services provided to eligible schools and libraries for “educational purposes.”¹⁰ As a result, E-Rate rules require schools and libraries to use eligible services “primarily for educational purposes.”¹¹ In the case of schools, “educational purposes” is defined as “activities that are integral, immediate, and proximate to the education of students.”¹² In the case of libraries, “educational purposes” is defined as activities that are “integral, immediate, and proximate to the provision of library services to library patrons.”¹³ The Commission also established a presumption that activities that occur on library or school property serve an educational purpose and, therefore, are eligible for E-Rate funding.¹⁴

7. Section 254(h)(2)(A) of the Communications Act directs the Commission to promulgate rules “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries.”¹⁵ While Congress has made clear that the goal of such universal service funding is to enhance access “to Americans everywhere via schools and libraries” to ensure that “no one is barred from benefiting from the power of the Information Age,”¹⁶ neither Congress nor the Commission has defined the term “classroom” or placed any explicit location restrictions on schools or libraries. However, in general, the E-Rate program does not provide support for most off-premises uses of eligible services, and applicants are usually required to cost-allocate the costs of the portion of services used off-premises from their funding requests.¹⁷

8. *Eligible Off-Premises Use of E-Rate-Supported Services & Equipment.* In certain instances, the Commission has provided support for the off-premises use of E-Rate-supported services, after first finding that the off-premises provision of such service is “integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, serves an educational purpose.”¹⁸ For example, in 2003, the Commission determined that “a school bus driver’s use of wireless telecommunications services while delivering children to and from school, a library staff’s person’s use of wireless telecommunications services on a library’s mobile library unit van, and the use by teachers or other school staff of wireless telecommunications services while accompanying students on

or library can demonstrate that the plans are the most cost-effective option for providing internal broadband access for mobile devices. *Id.*; see also *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 23-1171, 2023 WL 8803733 at *11 (WCB Dec. 15, 2023) (*FY 2024 Eligible Services List*).

¹⁰ 47 U.S.C. § 254(h)(1)(B).

¹¹ 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v); see *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18774, para. 22 (2010) (*Schools and Libraries Sixth Report and Order*) (amending the rules to require that services be used *primarily* for educational purposes and explaining that “[t]o primarily use services supported by E-[R]ate, E-[R]ate recipients must ensure that students always get first priority in use of the schools’ resources”).

¹² 47 CFR § 54.500 (defining “educational purposes”); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*) (clarifying the meaning of educational purposes).

¹³ 47 CFR § 54.500; *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

¹⁴ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

¹⁵ 47 U.S.C. § 254(h)(2)(A).

¹⁶ S. Rep. No. 104-230, at 132-33 (1996) (Joint Explanatory Statement).

¹⁷ 47 CFR § 54.504(e) (detailing the requirement to cost-allocate ineligible services from requests); *FY 2024 Eligible Services List*, 2023 WL 8803733 at *12 (adopting the eligible services list for funding year 2024 and requiring that off-campus use generally be cost-allocated from a funding request, among other things).

¹⁸ See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-9209, para. 19.

a field trip or sporting event” are permissible activities that could be supported by the E-Rate program.¹⁹ Similarly, recognizing the unique challenges of certain residential student populations, the Commission allowed E-Rate support for eligible services serving the residential areas of schools that serve unique populations—including schools on Tribal lands and schools designed to serve students with medical needs, among others—because such services are primarily, if not exclusively, for educational purposes.²⁰

9. The Commission has also examined other measures to help address the digital and educational divide, including allowing E-Rate support for wireless connectivity services used outside of the school or library building. For example, in the *2010 E-Rate Broadband NPRM*, the Commission sought comment on whether to adopt the National Broadband Plan’s recommendation to provide E-Rate support for wireless Internet access service for portable learning devices that are used beyond school or library premises.²¹ In response, commenters generally agreed that students need to be able to learn virtually, which requires Internet access outside of school and library buildings.²² Accordingly, the Commission launched a pilot program—E-Rate Deployed Ubiquitously (EDU2011)—to investigate the merits and challenges of funding wireless off-premises connectivity services for mobile learning devices through the E-Rate program.²³ As part of the pilot program, for funding year 2011, the Commission authorized up to \$10 million in E-Rate support for a small number of off-premises wireless connectivity projects that were submitted by schools and libraries and approved by the Commission.

10. More recently, on October 19, 2023, the Commission issued the *School Bus Wi-Fi Declaratory Ruling*, which clarified that the use of Wi-Fi on school buses is an educational purpose for the E-Rate program in light of the lack of reliable broadband connections at students’ homes and the need for connectivity to complete homework and other assignments before and after school hours.²⁴ Therefore,

¹⁹ See *id.* at n.28.

²⁰ See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18779, paras. 31-32.

²¹ See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6891-93, paras. 45-51 (2010) (*E-Rate Broadband NPRM*); see also FCC, Connecting America: The National Broadband Plan at 239 (2010), <https://www.fcc.gov/general/national-broadband-plan> (National Broadband Plan).

²² See, e.g., San Diego Unified School District Reply, CC Docket No. 02-6, GN Docket No. 09-51, at 5 (rec. July 25, 2010) (SDUSD Reply) (explaining that “[m]obile broadband equipment, access and applications will allow our teachers to reach our students, and vice versa, no matter where they are during the day and in the evenings”); AT&T Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 9 (rec. July 11, 2010) (AT&T Comments) (“[T]oday’s educational systems increasingly require students to have access to information outside of the classroom.”); Cisco Systems, Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 5-6 (rec. July 8, 2010) (Cisco Comments) (“[T]echnological advances create educational opportunities for students anywhere students have access to a broadband connection, allowing learning to continue even after students leave school grounds.”); eChalk, Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 3-4 (rec. July 8, 2010) (eChalk Comments) (supporting the “learning outside of the classroom that is increasingly occurring with the advent of new technologies focused on educating students”); Dr. Anthony D. Machado Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 6 (rec. July 8, 2010) (filed on behalf of Miami-Dade County Public Schools) (MDCPS Comments) (supporting E-Rate funding for Internet access services used for learning both on and off school premises); Ohio E-Rate Consortium Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 15-16 (rec. July 8, 2010) (Ohio E-Rate Consortium Comments) (“For elementary and high school students to maintain a level of competency (both technological and general) comparable to that of their peers, they must have Internet access outside of the classroom.”); Public Broadcasting Service Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 2-4 (rec. July 8, 2010) (PBS Comments) (explaining that students without broadband access at home are increasingly being left behind and the E-Rate program should “close the gap so that more children can take advantage of the vast library of educational content on the Internet both inside and outside the classroom”).

²³ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18783-87, paras. 41-50.

²⁴ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Declaratory Ruling, FCC 23-84, 2023 WL 8586523 at *6, para. 9 & n.32 (Oct. 25, 2023) (*School Bus Wi-Fi Declaratory Ruling*).

the provision of such service, including the equipment needed to provide such service, was deemed eligible for E-Rate support beginning in funding year 2024.²⁵ In the *School Bus Wi-Fi Declaratory Ruling*, the Commission concluded that any further determination to support off-campus use of E-Rate-supported services would require that the Commission first find that the off-campus provision of such service is “integral, immediate, and proximate to the education of students or the provision of library services to library patrons,” and therefore, would be considered to serve an educational purpose.²⁶

11. In addition to the above-referenced proceedings, over the years, multiple applicants and other stakeholders have requested that the Commission allow the use of E-Rate-funded equipment and services off-premises to enhance broadband access for students and library patrons who lack reliable access outside of their school or library without requiring the removal of the costs of this ineligible use from their E-Rate funding requests.²⁷ The volume of requests asking to allow the off-premises use of E-Rate-supported equipment and services increased dramatically during the COVID-19 pandemic, when schools and libraries were abruptly forced to close their doors and unexpectedly had to transition to full-time remote learning. In February 2021, the Wireline Competition Bureau (Bureau) issued a Public Notice seeking comment on several emergency relief petitions requesting to allow applicants to enable remote learning during the pandemic²⁸ by opening their E-Rate-funded broadband networks to students and library patrons located near the school or library,²⁹ or by providing off-premises Wi-Fi hotspots and services to students and library patrons who lacked access to the Internet at their homes.³⁰ In response, the vast majority of commenters asserted that because of the massive shift to remote learning, students’ homes became “virtual classrooms” and students without broadband access were being left behind during

²⁵ *Id.*; see also *FY 2024 Eligible Services List*, 2023 WL 8803733 at *3-5, paras. 8-14 (making mobile wireless broadband connectivity for school buses and the equipment needed to make the services functional eligible as a category one service beginning in funding year 2024).

²⁶ See *School Bus Wi-Fi Declaratory Ruling*, 2023 WL 8586523 at *6, para. 9 & n.32.

²⁷ See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11397-99, paras. 319-23 (2013) (seeking comment on two petitions for waiver to permit E-Rate funding for offsite use of community hotspots); *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-Rate Connectivity*, CC Docket 02-6, WC Docket Nos. 10-90 and 13-184, Public Notice, 31 FCC Rcd 10510 (WCB 2016) (seeking comment on two petitions for waiver of E-Rate program cost allocation rule to allow off-campus use of E-Rate-funded services by students at home for educational purposes).

²⁸ *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31, Public Notice, 36 FCC Rcd 1304 (WCB 2021) (2021 Remote Learning PN).

²⁹ See Petition for Waiver on behalf of the State of Colorado, WC Docket No. 13-184 (filed Sept. 2, 2020), <https://www.fcc.gov/ecfs/filing/10902218280692> (Colorado Petition).

³⁰ See, e.g., Petition for Expedited Declaratory Ruling and Waivers filed by the Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 13-184, at 8-10, 18-19 (filed Jan. 26, 2021), <https://www.fcc.gov/ecfs/filing/101260036427898> (SHLB Petition) (arguing that connectivity solutions to expand broadband accessibility for remote learning during the pandemic are for educational purposes, including personal hotspots with mobile data connections); Letter from John Kraman, Chief Information Officer, Mississippi Department of Education, to Ajit Pai, Chairman, FCC, CC Docket No. 02-6, at 1 (filed Mar. 24, 2020), <https://www.fcc.gov/ecfs/filing/1032470516353> (asking the Commission to make data cards and Wi-Fi hotspots eligible as long as schools provide remote education due to the COVID-19 pandemic); Letter from Lyell Walker, State E-Rate Coordinator, Florida Department of Management Services, to Ajit Pai, Chairman, FCC, CC Docket No. 02-6, at 1 (filed Mar. 12, 2020), <https://www.fcc.gov/ecfs/filing/10312280696180>; Letter from Terry Loftus, Assistant Superintendent & Chief Technology Officer, San Diego County Office of Education, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 21-31, at 1-2 (filed Apr. 9, 2020), <https://www.fcc.gov/ecfs/filing/104231014223661> (asking the Commission to deem mobile Wi-Fi hotspots and the monthly recurring services eligible for E-Rate support).

the pandemic.³¹ They also urged the Commission to provide E-Rate support for the off-premises use of Wi-Fi hotspots and services on a permanent basis,³² arguing that the pandemic only underscored that Internet access at home is essential to the modern technology-based learning environment of today's schools and libraries.³³ The Commission's consideration of permitting E-Rate funding for off-premises uses was temporarily placed on hold when Congress created the ECF program to address those needs during the COVID-19 pandemic emergency.³⁴

12. *Emergency Connectivity Fund Program.* As part of the American Rescue Plan Act of 2021, Congress appropriated \$7.171 billion to create an Emergency Connectivity Fund and directed the Commission to promulgate rules providing for the distribution of funding 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 during the COVID-19 emergency period.³⁵ On May 10, 2021, the Commission adopted a Report and Order establishing the ECF program and allowing eligible schools and libraries to request funding for the purchase of eligible equipment and/or services needed to support remote learning during the COVID-19 pandemic.³⁶ The ECF program provides funding to connect students, school staff, and library patrons who would otherwise be unable to fully engage in remote learning and includes funding for the purchase

³¹ See, e.g., Education & Libraries Network Coalition *2021 Remote Learning PN Comments* at 7 (rec. Feb. 16, 2021) (EdLiNC *2021 Remote Learning PN Comments*) (explaining that home Internet access is now a prerequisite for receiving an education); Internet Association *2021 Remote Learning PN Comments* at 5 (rec. Feb. 16, 2021) (IA *2021 Remote Learning PN Comments*) (stating that the COVID-19 emergency has “drastically changed the way all students are able to learn and educators are able to teach”); Infinity Communications & Consulting, Inc. *2021 Remote Learning PN Comments* at 1 (rec. Feb. 16, 2021) (Infinity *2021 Remote Learning PN Comments*) (arguing that the “presumption that educational opportunities and environments occur only in the school or library is an antiquated concept”).

³² See, e.g., New York State Education Department *2021 Remote Learning PN Comments* at 4 (rec. Feb. 16, 2021) (NYSED *2021 Remote Learning PN Comments*) (recommending that the E-Rate program provide support for the off-campus use of hotspots during and after the pandemic to close the Homework Gap); Lee County School District *2021 Remote Learning PN Comments* at 1-2 (rec. Feb. 16, 2021) (LCSD *2021 Remote Learning PN Comments*) (urging the Commission to provide funding for mobile hotspots to address the Homework Gap, both during and after the pandemic); Qualcomm Incorporated *2021 Remote Learning PN Comments* at 10 (rec. Feb. 16, 2021) (Qualcomm *2021 Remote Learning PN Comments*) (arguing that the E-Rate program should cover mobile hotspots “without restriction” and noting that mobile hotspots provide important benefits because students can use them whenever and wherever); Aurora Institute *2021 Remote Learning PN Comments* at 2-3 (rec. Feb. 16, 2021) (Aurora *2021 Remote Learning PN Comments*) (explaining that the E-Rate program should step in as a more permanent solution to funding wireless hotspots to continue the temporary solutions provided through emergency pandemic relief); Kellogg & Sovereign Consulting, LLC *2021 Remote Learning PN Comments* at 3-5 (rec. Feb. 16, 2021) (KSLLC *2021 Remote Learning PN Comments*) (surveying 12 school districts that reported needing E-Rate support to cover wireless hotspots the most because students with the greatest need are often high mobility and require mobile connectivity solutions like hotspots).

³³ See, e.g., IA *2021 Remote Learning PN Comments* at 2 (supporting the use of E-Rate funds for remote learning as a way of adapting to modern educational needs in “the age of the ‘virtual’ campus”); Qualcomm *2021 Remote Learning PN Comments* at 1-2 (referring to connectivity as “the 21st Century version of textbooks”); INCOMPAS *2021 Remote Learning PN Reply Comments* at 6 (rec. Feb. 23, 2021) (INCOMPAS *2021 Remote Learning PN Reply*) (recognizing the need to prepare for future emergencies that may cause additional campus closures); Los Angeles Unified School District *2021 Remote Learning PN Comments* at 4-5 (rec. Feb. 12, 2021) (LAUSD *2021 Remote Learning PN Comments*) (urging the Commission to re-examine the E-Rate rules to support the rapidly changing face of education, even beyond the pandemic).

³⁴ H.R. 1319, tit. VII, § 7402(a)(1)-(2).

³⁵ *Id.*

³⁶ See generally *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd 8696.

of Wi-Fi hotspots and services for use at different locations, including locations other than at their school or library, among the eligible equipment and services that are available for funding through the program.³⁷

13. Following three successful application filing windows and almost three years of funding broadband services, mostly through Wi-Fi hotspots, for students, school staff, and library patrons with unmet needs,³⁸ the Commission has committed more than \$122 million for the purchase of Wi-Fi hotspot devices³⁹ and nearly \$1.3 billion for the associated services to provide off-premises broadband connectivity to students, school staff, and library patrons who otherwise would lack sufficient broadband access needed to fully engage in remote learning.⁴⁰ With ECF funding, schools and libraries have made

³⁷ See, e.g., *id.* at 8708, 8712-13, 8721-23, paras. 29, 35, 49-52 (allowing schools and libraries to use ECF support to purchase Wi-Fi hotspots and commercially available Internet access services to provide off-premises broadband connections to students, school staff, and library patrons who otherwise lack sufficient broadband access).

³⁸ 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*) (opening the first application filing window from June 29, 2021 to August 13, 2021); 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-emergencyconnectivity-fund-requests> (*Second ECF Application Window News Release*) (opening the second application filing window from September 28, 2021 to October 13, 2021); *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, DA 22-309, 2022 WL 867322 at *3 (WCB Mar. 23, 2022) (*Third ECF Application Window PN*) (opening the third application filing window from April 28, 2022 to May 13, 2022, and announcing demand of \$6.4 billion requested during the first two filing windows); 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*) (announcing demand of \$2.81 billion during the third and final ECF filing window).

³⁹ We note that some funding commitments have been returned or canceled, resulting in a lower figure than previously reported in the *NPRM*. See *NPRM*, 2023 WL 8602208, at *2, para. 4.

⁴⁰ See Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (reporting data on what Wi-Fi hotspot devices and services have been requested in the ECF program to date). When creating the ECF program, the Commission established certain metrics to measure the success of the limited-time, emergency funding in addressing the unmet need for off-premises connectivity by students, school staff, and library patrons, including the number of connected devices and broadband Internet access connections provided during the pandemic. See *ECF Order*, 36 FCC Rcd at 8703, para. 16. Through the ECF program, over 23,052 applications, including 39,290 funding requests for over \$9.3 billion, were submitted, reviewed, and processed. Analyzing ECF application and disbursement data since 2021, the ECF program has successfully funded more than 13.5 million connected devices and 8 million broadband connections to students, school staff, and library patrons. By supporting the eligible equipment and services needed to provide off-premises connectivity, the program has helped more than 12,700 schools, libraries, and consortia of schools and libraries in all 50 states, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, and the District of Columbia. In doing so, the funding has reached students, school staff, and library patrons with unmet need in both rural and urban areas across the country, with 47 percent of ECF funding commitments going to schools and libraries located in rural areas. This is particularly meaningful when paired with the fact that more than 18 million students—or approximately one-third of all K-12 students in the United States—were supported by this funding source for the purpose of providing off-premises connectivity. See Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (providing data on the eligible equipment and services requested and funded through the ECF program to date). Taken together, this data demonstrates how ECF funding has helped to address the digital divide and Homework Gap by enabling schools and libraries to connect students, school staff, and library patrons in some of the most rural or economically-disadvantaged communities around the United States.

(continued....)

significant progress over the past few years in closing the Homework Gap and digital divide.⁴¹ For example, one report shows that schools across the state of California were able to devote the majority of their ECF funding toward providing connectivity to students with historically lower levels of Internet access.⁴² Libraries have also found great success with establishing Wi-Fi hotspot lending programs with ECF funding to provide the Wi-Fi hotspots and recurring mobile wireless broadband services needed to connect their most vulnerable residents to library resources.⁴³

Moreover, the Commission also established a goal of collecting and publishing pricing data for ECF-funded equipment and services in order to inform future purchasing and policy decisions. *See ECF Order*, 36 FCC Rcd at 8705-8706, para. 22. In the past three years, the ECF program has provided the Commission with valuable information about supporting off-premises equipment and services, including the costs of Wi-Fi hotspots and wireless Internet services purchased by schools and libraries across the country and paid for by the ECF program. *See Universal Service Administrative Company, Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (publishing information about ECF program demand and funding for equipment and services including one-time unit costs, monthly recurring costs, taxes, installation costs, and makes and models). As discussed in Section III, the Commission is able to rely on ECF program data to inform the general costs of Wi-Fi hotspots and mobile wireless broadband services for the purposes of establishing funding caps in the E-Rate program, as well as to estimate potential demand for such equipment and services in future years. *Infra* note 128 (relying on the median cost of Wi-Fi hotspots funded through the ECF program to calculate the funding caps) and 324 (estimating demand for Wi-Fi hotspots based on ECF program data). Additionally, the Commission was able to learn from the challenges faced in the ECF program in funding off-premises Wi-Fi hotspots and mobile wireless broadband service by establishing numerous safeguards to ensure proper use of the same equipment and services in the E-Rate program. *See generally* Section III.E (establishing safeguards to protect the use of E-Rate funds for off-premises use of Wi-Fi hotspots and services). In sum, we find that the ECF program has served as a prime source of recent information about supporting off-premises Internet access for schools and libraries and enabled the Commission to effectively consider the benefits, costs, and challenges associated with its decision to make Wi-Fi hotspots and services eligible for E-Rate support. *See* Government Accountability Office (GAO), *Wireless Internet: FCC Should Assess Making Off-School-Premises Access Eligible for Additional Federal Support*, GAO-19-564 (July 29, 2019) (recommending that the Commission assess potential benefits, costs, and challenges in making off-school-premises wireless services eligible for E-Rate program support).

⁴¹ *See* Javeria Salman, *How One City Closed the Digital Divide for Nearly all its Students* (Apr. 14, 2022), <https://hechingerreport.org/how-one-city-closed-the-digital-divide-for-nearly-all-its-students/> (reporting that schools in Oakland, California have used ECF support and other funds to connect 98% of their student population through the distribution of Wi-Fi hotspots and connected devices); Marla K. Kuhlman, *Federal Grant Gives Westerville Middle Schoolers Access to Laptops, Hot Spots for Homework* (Dec. 2, 2021), <https://www.dispatch.com/story/news/local/communities/westerville/2021/12/02/grant-gives-westerville-middle-schoolers-access-laptops-hot-spots-for-homework/8837114002/> (reporting that students in Westerville, Ohio were provided connected devices and Wi-Fi hotspot service to meet their remote learning needs).

⁴² *See* Joseph Hayes & Niu Gao, *How Have California School Districts Used the Emergency Connectivity Fund* (Dec. 4, 2023), <https://www.ppic.org/blog/how-have-california-school-districts-used-the-emergency-connectivity-fund/> (explaining that the majority of the \$859 million in approved ECF funding for California school districts went to districts with high concentrations of groups that tend to have lower levels of internet access, such as low income students).

⁴³ *See e.g.*, Cindy Aguirre, *Need Internet Access?* (Mar. 8, 2022), <https://seguintoday.com/2022/03/08/need-internet-access/> (using ECF funding to purchase and provide 30 hotspots for rural families in Sequin, Texas to check out and receive unlimited Internet access for up to 30 days and reporting that “there are many many families [without Internet access] so being able to offer them a resource that gives them access to the internet and provides that unlimited data is huge”); Aaron Stuve, *Blue Earth County Library System to Offer Wi-Fi Hotspots for Checkout* (Oct. 25, 2021), <https://www.keyc.com/2021/10/25/blue-earth-county-library-system-offer-wi-fi-hotspots-checkout/> (explaining that Wi-Fi hotspots would be available to patrons in Blue Earth County, Minnesota “if they don’t have Internet access at home, if they need internet, as so many do, for school, for work, for job applications, for so many things”); North West Alabamian, *Need Free Wi-Fi for a Week? Visit your Local Library* (Jan. 25, 2022), <https://mynwpaper.com/node/10439> (reporting that each of the three Carl Elliot libraries in Winston County,

(continued....)

14. On May 11, 2023, the U.S. Department of Health and Human Services (HHS) permitted the COVID-19 public health emergency to expire,⁴⁴ triggering the ECF program's statutory requirement to sunset on the June 30 that first occurs one year after the date that the Secretary of HHS determines that a public health emergency no longer exists—i.e., June 30, 2024.⁴⁵ In light of the end of the ECF program, several stakeholders reiterated pre-ECF requests for the Commission to permit E-Rate support for off-premises connectivity services, including the provision of devices.⁴⁶

15. *Emergency Broadband Benefit & Affordable Connectivity Programs.* At the end of 2020 and due to the COVID-19 pandemic, Congress provided the Commission with \$3.2 billion to create the Emergency Broadband Benefit program (EBB program) to provide discounted Internet service and connected devices to low-income households.⁴⁷ The EBB program was launched on May 12, 2021, and grew to more than 9 million households by the end of that year.⁴⁸ Just six months after the launch of the EBB program, as part of the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established a \$14.2 billion successor program to the EBB program, the Affordable Connectivity Program

Alabama will have three hotspot devices available for check out for a week using a library card); Samantha Silva, *Emergency Connectivity Program gives \$2.4 million in Grant Funding to Corpus Christi Public Libraries* (Aug. 6, 2022), <https://www.kiitv.com/article/news/local/grant-funding-corpus-christi-public-libraries/503-7320a4fd-bc31-42c1-9d33-024ff36a83e6> (providing 5,000 Wi-Fi hotspots and services for Corpus Christi Public Libraries' patrons who are otherwise without access); see also Liam Niemeyer, *Hotspot Lending Programs at Rural Libraries Finding Success, High Demand Through First Year* (Sept. 2, 2022), <https://www.weku.org/education/2022-09-02/hotspot-lending-programs-at-rural-libraries-finding-success-high-demand-through-first-year> (reporting that ECF funding allowed 26 libraries throughout the state of Kentucky to purchase more than 2,700 hotspots to provide Internet access to their residents and that there continues to be a high demand for this library resource).

⁴⁴ The Public Health Emergency concerning COVID-19 was originally declared on January 30, 2020 "as in existence since January 27, 2020," by the Secretary of HHS, pursuant to section 319 of the Public Health Service Act. See 47 U.S.C. § 247d. Although the COVID-19 national emergency declared pursuant to section 202 of the National Emergencies Act (50 U.S.C. § 1622) terminated on April 10, 2023, when President Biden signed bipartisan congressional resolution H.J. Res. 7, the public health emergency declared by HHS pursuant to section 319 of the Public Health Service Act expired 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 July 15, 2024).

⁴⁵ See H.R. 1319, tit. VII, § 7402(d)(5)(B). We note that June 30, 2024 is also the service delivery deadline for third window funding requests for equipment, and recurring and nonrecurring services submitted in the ECF program; see also 47 CFR § 54.1711(e)(2).

⁴⁶ See, e.g., Letter from Debra Duardo, Superintendent, Los Angeles County Office of Education and Los Angeles County Library et al., to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 21-476, at 2 (filed Feb. 16, 2022) (Los Angeles Schools and Library *Ex Parte*) (urging the Commission to consider the off-premises use of E-Rate supported services to enable remote learning an educational purpose and to modify E-Rate rules to support devices funded by the ECF program, including Wi-Fi hotspots); Aaron Gifford, *FCC Connectivity Fund for Closing Homework Gap is Sunsetting* (Feb. 22, 2024), <https://www.govtech.com/education/k-12/fcc-connectivity-fund-for-closing-homework-gap-is-sunsetting> (citing a spokesman for Oakland Unified School District as saying that the scaling back of connectivity funded by emergency funding that students rely on after school would be "reintroducing the digital divide").

⁴⁷ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

⁴⁸ See Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

(ACP).⁴⁹ The ACP provided a discount of up to \$30 per month toward Internet service for eligible low-income households and up to \$75 per month for households on qualifying Tribal lands, as well as a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers.⁵⁰ In just two years, ACP helped provide discounted Internet service to more than 23 million low-income households to ensure these households were able to afford the broadband they needed for work, school, healthcare, and more.⁵¹ Due to the lack of additional funding from Congress, the \$14.2 billion initially made available for ACP officially ran out in May 2024.⁵² As a result, beginning on June 1, 2024, millions of households including students, school staff, and library patrons around the country lost the ACP benefit that helped them stay connected.

16. *Notice of Proposed Rulemaking.* To address ongoing remote learning needs of schools and libraries, on November 8, 2023, the Commission adopted a Notice of Proposed Rulemaking seeking comment on its proposal to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and mobile wireless Internet services that could be used off-premises.⁵³ The Commission sought comment on how the Commission can implement funding for the off-premises use of Wi-Fi hotspots and services within existing E-Rate program processes,⁵⁴ and how it can best target E-Rate funding to students, school staff, and library patrons with the greatest need.⁵⁵ In addition, the Commission sought comment on what actions are necessary to safeguard limited E-Rate program funds from potential waste, fraud, or abuse.⁵⁶ Finally, the Commission sought comment on how to adapt the E-Rate program to reflect the virtual nature of today's modern technology-driven educational environment and its legal authority to adopt such measures.⁵⁷

III. DISCUSSION

17. In this Order, we take steps to modernize the E-Rate program to ensure that schools and libraries across the nation have the tools necessary to connect their students, school staff, or library patrons who have fallen onto the wrong side of the digital divide or the Homework Gap. First, we permit schools and libraries to purchase Wi-Fi hotspots and services that they can lend to students, school staff, and library patrons for off-premises use and direct the Bureau to make the services and equipment eligible as part of the funding year 2025 eligible services list proceeding. Second, relying on the successes of and

⁴⁹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60502(a)(3), 135 Stat. 429, 1240 (2021) (codified at 47 U.S.C. § 1752); Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(1), (4); *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450; Public Notice, 36 FCC Rcd 16290, 16291, para. 3 (WCB Nov. 18, 2021) (*ACP Public Notice*). The EBB program transitioned to the ACP before the original funding of \$3.2 billion was fully expended. Congress renamed the Emergency Broadband Benefit Fund as the Affordable Connectivity Fund and appropriated additional funds to the renamed program. Section 60502(a)(2) *Change to Program Name*. As such, the remaining funds from the original appropriation were used to support the ACP, bringing the total funding appropriated for the FCC's broadband affordability program to \$17.4 billion. Information on the claims made under the EBB program and per month for the ACP are available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/>.

⁵⁰ See 47 CFR § 54.1803(a).

⁵¹ See *More Than 20 Million Households Enroll in Nation's Largest Broadband Affordability Program*, Fact Sheet (Aug. 14, 2023), <https://docs.fcc.gov/public/attachments/DOC-396000A1.pdf>.

⁵² See Press Release, FCC, FCC Brings Affordable Connectivity Program to a Close (May 31, 2024), <https://docs.fcc.gov/public/attachments/DOC-402930A1.pdf>.

⁵³ *NPRM*, 2023 WL 8602208.

⁵⁴ *Id.* at *8-12, paras. 19-29.

⁵⁵ *Id.* at *12-14, paras. 30-33.

⁵⁶ *Id.* at *14-19, paras. 34-44.

⁵⁷ *Id.* at *19-24, paras. 45-58.

lessons learned from the ECF program, as well as the Wi-Fi hotspot lending programs established by schools and libraries with ECF support, we establish a budget mechanism to set a limit on the amount of support that an eligible school or library can request for Wi-Fi hotspots and services that can be loaned to their students, school staff, and library patrons, thereby allowing schools and libraries the flexibility to target those with the greatest need in their respective populations. Next, we also remain committed to supporting the connectivity needs of school and library buildings by prioritizing funding for these off-premises services after on-premises-related funding requests. Mindful of our duty to be a responsible steward of limited universal service resources, we also adopt safeguards to ensure the E-Rate funds are used for their intended purpose. Finally, we reaffirm our conclusions that the obligations of the Children's Internet Protection Act (CIPA) apply if the school or library receives E-Rate support for Internet service, Internet access, or network connection services or related equipment, including Wi-Fi hotspots.

A. Making Off-Premises Use of Wi-Fi Hotspots and Services Eligible for E-Rate Support

18. Based on the record and consistent with our authority pursuant to section 254(h) of the Communications Act, we adopt our proposal to permit schools and libraries to receive E-Rate support for Wi-Fi hotspots and services to be used off-premises by students, school staff, and library patrons.⁵⁸ Although the E-Rate program has not historically provided support for most off-premises uses of E-Rate-supported services, we agree with commenters that today's educational environment has substantially changed since the advent of the E-Rate program in 1997.⁵⁹ Namely, the increasing shift to digital learning due to evolving technologies as well as pandemic-related changes has resulted in Internet connectivity becoming a necessity to being able to fully participate in modern education for students, school staff, and library patrons alike.

19. For schools, the pandemic highlighted the digital divide, leaving those students without access to reliable home Internet unable to access educational resources, participate in remote learning, or connect with teachers. SBi described how emergency funding during the pandemic increased educational opportunities for Tribal students by focusing on digital inclusion and introducing digital learning tools that have been available to urban and suburban communities for years, allowing them to connect to schools on days they would otherwise miss and allowing teachers to reach students that would otherwise be left disconnected.⁶⁰ The digital divide between students with access to broadband at home and those without exacerbates existing inequalities, particularly for certain communities—such as those in rural or economically-disadvantaged areas.⁶¹ Commenters note that stable Internet connectivity at home is essential to “educational opportunity, equity, and achievement”⁶² with digital learning tools enabling

⁵⁸ *Id.* at *7, para. 18.

⁵⁹ See, e.g., Cellular South Licenses, LLC Comments at 3 (C Spire) (“[I]t is not a secret that the education system of 2024 looks much different than it did twenty-eight years ago.”); Education & Libraries Networks Coalition Comments at 6 (EdLiNC) (“[A]llowing E-Rate support for home connectivity would be reflective of much broader trends in K-12 education, with education no longer confined to classrooms and libraries.”); American Library Association Comments at 1 (ALA) (“New technologies continue to emerge, shaping modern life. With these shifts, the needs of library patrons and students evolve, as well, to rely more heavily on access to virtual and/or hybrid learning.”).

⁶⁰ See Smith Bagley, Inc. Comments at 1-4 (SBi) (describing the challenges for Tribal students in remote Tribal communities lacking home Internet access and thus “the means to learn at home”); 6 (“[s]ometimes, a teacher’s ability to check in and encourage a student makes all the difference, and these [technology] tools are vital to that educational mission”).

⁶¹ See CoSN, Defining Digital Equity, 1 (2022), <https://www.cosn.org/wp-content/uploads/2022/04/CoSNDefiningDigitalEquity-1-1.pdf>.

⁶² See, e.g., North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon Comments at 1 (NACEPF & Mobile Beacon).

“more expansive, up-to-date content, the inclusion of educational videos, and effective online collaboration.”⁶³ Others explain the reliance on online digital resources allows learners “to engage with supplemental educational materials, complete homework assignments, and connect with one another,” which leaves “[s]tudents and staff that are unable to access the connected classroom . . . at a significant disadvantage.”⁶⁴ A 2021 report observed that “[h]istorically students caught in the digital divide have lower academic achievement with a significant impact on lifetime earnings.”⁶⁵

20. Likewise, for libraries, providing free, high-speed access to the Internet is critical to many of the services libraries provide, particularly for disadvantaged communities.⁶⁶ Library services increasingly include virtual offerings.⁶⁷ For example, libraries allow patrons to access digital resources remotely, including reserving or renewing books,⁶⁸ accessing digital collections and e-materials,⁶⁹ providing community support resources,⁷⁰ and even offering support to library patrons who are educators

⁶³ See Qualcomm Inc. Comments at 4-5 (Qualcomm); see also, e.g., Association of California School Administrators, California School Boards Association Comments at 1 (ACSA-CSBA) (“[e]xpanding access to off-campus digital learning opportunities, including expanded access to instruction, collaboration opportunities, and high-quality digital resources, is a top priority”); California Association of School Business Officials Comments at 1-2 (CASBO) (noting the need for access to digital learning so students “are prepared for academic, workforce, and life success after graduation”).

⁶⁴ See Ohio Internet Technology Centers Comments at 2-3 (OITCs).

⁶⁵ Titilayo Tinubu Ali et al., *Looking Back, Looking Forward: What it Will Take to Permanently Close the K-12 Digital Divide* 8 (2021), https://www.commonssensemedia.org/sites/default/files/featured-content/files/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf (last visited July 15, 2024); see also NACEPF & Mobile Beacon Comments at 5-6.

⁶⁶ See cf. ALA Comments at 2 (explaining that homes lacking internet access are disproportionately low-income, in communities of color, or rural/remote, who rely on connectivity provided through E-Rate to schools and libraries).

⁶⁷ See, e.g., ALA Comments at 1 (noting services occurring outside of the library building, such as access to virtual learning and e-materials).

⁶⁸ See DC Public Library, *Find & Borrow*, <https://www.dclibrary.org/find-borrow> (last visited July 15, 2024) (enabling DCPL patrons to search the library’s catalog remotely and place a hold on a resource in circulation); New York Public Library, *How to Access the Library’s Digital Resources* 24/7, <https://www.nypl.org/about/remote-resources> (last visited July 15, 2024) (allowing NYPL patrons to manage their library account online to renew books).

⁶⁹ See, e.g., Bridges Library System, *Research and Resources*, <https://bridgeslibrarysystem.org/library-resources/digital-tools/research/> (last visited July 15, 2024) (listing the online resources available 24/7 to library patrons in southeastern WI, including access to genealogy, history, and newspaper databases, health and wellness resources, homework help and research databases, job search and resume assistance, audiobooks, eBooks, and online classes); Carson City Library, *Digital Resources*, <https://carsoncitylibrary.org/digital-resources/> (last visited July 15, 2024) (listing the online resources available to library patrons in Carson City, NV, including educational programs and offerings for all ages, research and reference databases to access digitized content like newspapers, magazines, and journals, language learning resources, and tutorials for the library’s most commonly used electronic resources); San Antonio Public Library, *Library Digital Offerings*, <https://guides.mysapl.org/librarydigitalofferings> (last visited July 15, 2024) (listing the online resources available to library patrons in San Antonio, TX to access audiobooks, eBooks, digital newspapers, digital magazines, and continuing education); Aiken Bamberg Barnwell Edgefield (ABBE) Regional Library System, *Digital Resources*, <https://www.abbe-lib.org/digital/> (last visited July 15, 2024) (listing the online resources available to patrons of the ABBE Regional Library System in SC, including eBooks, audiobooks, research reference content, and educational content for students).

⁷⁰ See, e.g., Prince George’s County Memorial Library System, *Community Resources*, <https://www.pgcmlls.info/community-resources> (last visited July 15, 2024) (providing a frequently updated list of helpful resources from government agencies, non-profits, partner organizations and other localized resources like food provider and distribution resources to library patrons in Prince George’s County, MD); Boise Public Library, *Community Resources*, <https://www.boisepubliclibrary.org/using-the-library/community-resources/> (last visited July 15, 2024) (providing information to patrons in Boise, ID about organizations and information gathered by the

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or students,⁷¹ making these digital resources available to library patrons at the moment they need them. Additionally, Wi-Fi hotspot lending programs that provide remote access to the Internet for library patrons are both successful and in high demand.⁷² For instance, one commenter explains that at the Chicopee Public Library, Wi-Fi hotspots are checked out “every day to people who have no other way of accessing this service without putting themselves in danger of being unable to afford basic necessities.”⁷³

21. With today’s action, we modernize the E-Rate program to address this digital inequity that leaves some students, school staff, and library patrons unable to fully participate in school work or access library resources. We further recognize how learning is no longer confined to the physical school or library building during regular operating hours, and how libraries and schools often serve to fill the educational and connectivity gap for their students, school staff, and library patrons who lack access to the Internet. Additionally, based on our experiences through the ECF program, we further seek to recognize the utility of Wi-Fi hotspots as an easily sourced and affordable means of providing connectivity for schools and libraries and acknowledge the commenters’ countless examples of how Wi-Fi hotspot lending programs established with ECF funding have benefitted communities and students around the nation.⁷⁴ Now, numerous libraries and schools are faced with the difficult decision to reduce the number of Wi-Fi hotspots available for circulation or start charging fees, not because of lack of demand, but because of lack of available funding.⁷⁵ This has only been further exacerbated by the recent

library’s resource team to promote the wellbeing of its patrons, including mental health, legal, and housing resources).

⁷¹ See, e.g., Jefferson County Public Library, *Launch into Learning: A Guide for K-12 Educators*, <https://jeffcolibrary.org/educator-guide/> (last visited July 15, 2024) (providing a comprehensive list of in person and online resources designed to help educators and students of all ages in Jefferson County, CO); San Jose Public Library, *Teachers & Educators*, <https://www.sjpl.org/teachers-educators/> (last visited July 15, 2024) (providing links to eResources for teachers, online resources for students, and other free resources and programs to support San Jose, CA teachers and educators).

⁷² See, e.g., E. Hoover de Galvez Comments at 1 (noting that Des Moines Public Library has 250 Wi-Fi hotspots available for check out, which are in high demand and regularly have a waiting list of over 100 people).

⁷³ See, e.g., H. Chauvin Comments at 1 (reporting as the librarian for Chicopee Public Library that Wi-Fi hotspots are checked out “every day to people who have no other way of accessing this service without putting themselves in danger of being unable to afford basic necessities”).

⁷⁴ See, e.g., NACEPF & Mobile Beacon Comments at 6 (explaining that some schools loan out hotspots so that students without home Internet can complete school assignments, engage in remote learning, and otherwise fully engage in their educational experience), at 7-8 (partnering with Providence Community Library back in 2012 to loan out hotspots); R. Sheffield Comments at 1 (stating that their library’s hotspots are constantly in high demand and used for homework, telehealth, continuing education, job upskilling, and more); EveryLibrary Institute NFP Comments at 2 (EveryLibrary Institute) (reporting that the New York Public Library began checking out hotspots in 2014); ALA Comments at 3-6, 14 (citing examples of library-offered hotspot lending programs that date back more than a decade from all over the country); New York State Library Reply at 2 (providing librarian accounts of how lending hotspots have benefitted their local communities in New York, including to complete schoolwork, telework, connect educators, and help during power outages); Laurel-Jones County Library System Inc. Reply at 1 (Laurel-Jones Libraries) (detailing the steady demand for the 2,000 hotspots funded through the ECF program and circulated in their community, noting that they receive 6-8 daily calls to check out the devices); Maine State Library Comments at 1 (reporting the value provided to patrons by loaning hotspots because of lack of Internet access).

⁷⁵ See, e.g., S. Taylor Comments at 1 (explaining that their library will reduce the number of hotspots in circulation when the ECF funding ends); C.A. DeLuca Comments at 1 (stating that they cannot afford to purchase more hotspots, despite needing more); S. Bodine Comments at 1 (reporting that the public library in Oakham, MA reduced their available hotspots from 10 to 3 due to lack of funding, despite being in constant circulation with waitlists); A. Dunn Comments at 1 (stating that their library is only able to afford a third of the hotspots on circulation and in high demand after ECF funding ended); B. McGraw Comments at 2 (noting that their school was forced to reduce their available hotspots from 100 funded through ECF to 10 with local funding); A. Six Comments at 1 (explaining that their library circulated over 300 hotspots using ECF funds and other resources, but will be

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loss of ACP benefits by many low-income households across the country. As such, we extend eligibility to provide eligible schools and libraries with much-needed assistance in getting the students, school staff, and library patrons with the greatest need connected via Wi-Fi hotspots and services that can be used off-premises.

B. Equipment & Service Eligibility

22. *Eligible Equipment & Services.* We adopt the proposed definitions to permit Wi-Fi hotspots and mobile wireless Internet services as eligible for E-Rate support. In the *NPRM*, we sought comment on what specific equipment and services should be deemed eligible for the off-premises use of Wi-Fi hotspots and mobile wireless Internet services.⁷⁶ Specifically, we sought comment on adopting the ECF program's definition of a Wi-Fi hotspot (i.e., "a device that is capable of (a) receiving advanced telecommunications and information services; and (b) sharing such services with a connected device through the use of Wi-Fi") and limiting service eligibility to commercially available mobile wireless Internet services that can be supported by and delivered with such Wi-Fi hotspots.⁷⁷ Commenters are largely supportive of making off-premises uses eligible for E-Rate funding and, despite also requesting additional equipment and services be made eligible, were supportive of the proposed definitions of Wi-Fi hotspots and mobile wireless Internet services that can be used off-premises.⁷⁸ Based on the record and as discussed further below, we adopt the proposed definitions for the equipment and services eligible for support in the E-Rate program and direct the Bureau to add Wi-Fi hotspots and mobile wireless Internet services that can be used off-premises as eligible services as part of the funding year 2025 eligible services list proceeding.

23. With respect to eligible equipment, we adopt definitions of "Wi-Fi" and "Wi-Fi hotspot" in our rules that are based on the definitions adopted by the Commission in the ECF program. Specifically, we define "Wi-Fi" as "wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11" and we define "Wi-Fi hotspot" as "a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi."⁷⁹ We find that this decision is both supported by the record and by our own experiences successfully providing connectivity to students, school staff, and library patrons delivered by Wi-Fi hotspots through the ECF program. However, we also wish to acknowledge that these terms may have other accepted meanings within the communications industry. For example, Intel defines "Wi-Fi hotspot" to mean "a physical location where individuals can access the Internet wirelessly through a wireless local area network (WLAN) using Wi-Fi technology."⁸⁰ We conclude that this definition would be overly broad for these purposes, as the function described can be provided by

unable to afford the hotspot lending service moving forward); The Council of the Great City Schools Comments at 1 (The Council) (expressing concern for how schools will continue to support remote Internet access once many of the emergency programs lapse); *see also* Liam Niemeyer, *Hotspot Lending Programs at Rural Libraries Finding Success, High Demand Through First Year* (Oct. 4, 2022), <https://hoptownchronicle.org/hotspot-lending-programs-at-rural-libraries-finding-success-high-demand-through-first-year/> (reporting that smaller libraries, like ones in Crittenden County, Kentucky, may have to start charging fees to be able to check-out a hotspot device once funding ends).

⁷⁶ *NPRM*, 2023 WL 8602208 at *8-9, paras. 19, 21.

⁷⁷ *Id.*

⁷⁸ *See, e.g.*, Schools, Health & Libraries Broadband Coalition (SHLB) & Open Technology Institute at New America (OTI) Comments at 7 (SHLB & OTI); State E-Rate Coordinators' Alliance Comments at 3 (SECA); N. Anokye Comments at 2 (supporting the proposed definition); CTIA Reply at 4-5 (supporting the inclusion of Wi-Fi hotspot devices and wireless data plans for such services).

⁷⁹ *See* Appendix B, amending 47 CFR § 54.500; *see also* 47 CFR § 54.1700(l)-(m) (defining "Wi-Fi" and "Wi-Fi hotspot" for the ECF program).

⁸⁰ *See* Intel, *What Is a Hotspot*, <https://www.intel.com/content/www/us/en/tech-tips-and-tricks/what-is-a-hotspot.html> (last visited July 15, 2024).

many different types of devices and may permit unintended scenarios such as funding public Wi-Fi hubs in a public park or a community center, which is beyond the scope of our goal to provide connectivity to individual students, school staff, or library patrons caught in the Homework Gap or digital divide. Therefore, for the purposes of the E-Rate program, the definition we adopt for “Wi-Fi hotspot” means a device (sometimes referred to as a “mobile hotspot” or “portable hotspot device”)⁸¹ that is intended to provide Wi-Fi connectivity to a hotspot user as its sole function. Additionally, we limit the capability of a sole purpose Wi-Fi hotspot to devices that: (1) are portable; and (2) are a single device (i.e., not a set of linked devices). Finally, these Wi-Fi hotspots must be for use with a commercially available mobile wireless Internet service, rather than for use with CBRS or other private network services.⁸²

24. We decline to make other multi-functional devices that can support Wi-Fi eligible for E-Rate support. Thus, we find such multi-functional devices, e.g., smartphones, PCs, notebooks, tablets, customer premises equipment, routers or switches, and wireless access points, etc., are not eligible.⁸³ In the *ECF Order*, we also found it unnecessary to support costly smartphones used as Wi-Fi hotspots, when much less expensive hotspot devices can serve the same purpose.⁸⁴ We find this determination remains true today; and therefore, we limit E-Rate support to sole function Wi-Fi hotspot devices. Additionally, with respect to the requests to support end-user devices like laptops or tablets,⁸⁵ we conclude that this equipment remains ineligible for E-Rate support, consistent with the Commission’s previous decisions to decline support for “computers and other peripheral equipment” based on its finding that only equipment that is an essential element in the transmission of information is eligible (e.g., internal connections) for E-Rate support.⁸⁶ Similar to our reasoning for making smartphones ineligible, we also find it unnecessary to take on the costly expenses of laptops or tablets with built-in wireless connections, when less expensive, sole purpose Wi-Fi hotspots are capable of delivering the same service. We also decline to permit applicants to request the mobile wireless services delivered to broadband-enabled end user devices (e.g., laptops, tablets). While we recognize that there are some benefits to students using these devices,⁸⁷ we are concerned that they add unneeded complexity in our review of the services eligibility, particularly in trying to ensure these E-Rate-supported services are targeted to students with need, rather than just to

⁸¹ See T-Mobile, *What is a Wi-Fi hotspot?*, <https://www.t-mobile.com/devices/iot/hotspots> (last visited July 15, 2024).

⁸² CBRS customer premises equipment is ineligible as a Wi-Fi hotspot. *But see* Letter from Kristen Corra, Policy Counsel, SHLB, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 7 (filed July 11, 2024) (providing an example of a large library system seeking to expand its lending program for hotspots that can be used with an existing CBRS network) (SHLB July 11, 2024 *Ex Parte* Letter).

⁸³ Equipment that is currently eligible for category one or category two support is not changed. E-Rate funding can still be requested and received, for example, for routers, switches, and wireless access points, as eligible category two internal connections. *See e.g., FY 2024 Eligible Services List*, 2023 WL 8803733, at *9 (specifying the eligibility of internal connections, including switches, routers, and access points).

⁸⁴ *See ECF Order*, 36 FCC Rcd at 8711-12, para. 33.

⁸⁵ *See, e.g.,* Computer Technology Link Corp. Comments at 2 (CTL); NACEPF & Mobile Beacon Comments at 8-9; SHLB & OTI Comments at 7-8; Dallas Independent School District Comments at 2 (Dallas ISD); R. Frisby at 1; Leech Lake Band Of Ojibwe Reply at 1 (LLBO); CTIA Reply at 5; Qualcomm Comments at 1.

⁸⁶ *See Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021-22, paras. 459-60 (1997) (*First Universal Service Order*).

⁸⁷ *See, e.g.,* SHLB & OTI Comments at n.10 (requesting eligibility for services delivered to LTE-enabled devices, but not the devices themselves); Los Angeles Unified School District Comments at n.1 (LAUSD) (noting that funding hotspot devices would be unnecessary if the FCC funds services to LTE-enabled devices); SHLB July 11, 2024 *Ex Parte* Letter at 7 (recommending the FCC permit funding for services to 4G/5G enabled devices because the embedded modems “utilize the same functionality as a traditional Wi-Fi hotspot, service-only to these devices can still be competitively bid, and an applicant can turn off service to any particular device or transfer service from one device to another dynamically”).

students who need a school-assigned tablet or laptop.

25. With respect to mobile wireless Internet services, we limit the use of services to those that can be supported by and delivered with Wi-Fi hotspots provided to an individual user.⁸⁸ We appreciate the suggestions of several commenters who urge the Commission to also expand eligibility beyond just Wi-Fi hotspots and mobile wireless services.⁸⁹ Citing concerns that limiting eligibility to Wi-Fi hotspots and mobile wireless services would be contrary to the statutory requirement in section 254(h)(2)(A) of the Communications Act to establish “competitively neutral” rules,⁹⁰ these commenters argue that the Commission should also permit E-Rate support for other off-premises technologies, including: fixed wireless connections and the related equipment,⁹¹ private 5G/LTE networks,⁹² Citizens Band Radio Service (CBRS) and television white space (TVWS),⁹³ fiber,⁹⁴ and network expansion or construction.⁹⁵ We acknowledge these commenters’ concerns and recognize that connectivity provided by Wi-Fi hotspots is not a one-size-fits-all solution.⁹⁶ However, in taking this action, we remain focused on the statutory obligation to establish rules that enhance access to the extent it is “economically

⁸⁸ *NPRM*, 2023 WL 8602208 at *9, para. 21.

⁸⁹ See, e.g., B. Rasko Comments at 1 (suggesting that schools and libraries be given flexibility to find a solution that works best for them); Mississippi Center for Justice Comments at 5-7 (MCJ) (recommending the Commission provide flexibility to fund alternative solutions); Tekniam, LLC Comments at 2 (Tekniam) (urging the Commission to allow schools to select the technology that best meets their needs).

⁹⁰ See, e.g., NCTA - The Internet & Television Association Comments at 9-10 (NCTA) (arguing that limiting support to wireless service would be in conflict of section 254 (h)(2)(A)’s obligation to adopt competitively neutral rules); NACEPF & Mobile Beacon Reply at 22-23; Tekniam Comments at 2; Cox Communications, Inc. Reply at 1-2 (Cox Reply); WISPA – Broadband Without Boundaries Reply at 6 (WISPA Reply); Letter from Charles Dudley, General Counsel, Florida Internet & Television Association et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2 (filed July 11, 2024) (State Cable Providers *Ex Parte*).

⁹¹ See, e.g., Utah Education and Telehealth Network Comments at 2 (UETN) (requesting both fixed and wireless solutions); LLBO Reply at 1 (supporting hotspots and/or fixed wireless services); WISPA Reply at 6 (recommending support for both mobile and fixed wireless options); Cox Reply at 1 (requesting a technology-neutral approach); Texoma Communications, LLC d/b/a TekWav Reply at 3 (TekWav) (requesting the same equipment that was eligible for ECF, including modems and routers).

⁹² See, e.g., SHLB & OTI Comments at 18-19, 23-24 (suggesting that the costs of a private LTE or Wi-Fi network would be comparable over a period of time); UETN Comments at 2 (recommending support for private 5G/LTE networks, where necessary).

⁹³ See, e.g., ALA Comments at 11-12 (providing examples of CBRS and TVWS providing the best solutions for certain areas); SHLB & OTI Comments at 18-19 (providing examples of successful CBRS deployment models as an alternative solution); Wisconsin Department of Public Instruction Comments at 2 (WIDPI) (supporting eligibility of CBRS or TVWS when it is the most cost-effective option).

⁹⁴ See, e.g., Advocates for the EMS Disabled Comments at 4 (suggesting that fiber is a superior alternative to other technologies).

⁹⁵ See, e.g., CASBO Comments at 2-3 (urging the Commission to allow schools to use their own networks to provide off-premises connectivity); SHLB & OTI Comments at 11 (urging the Commission to allow new network deployment where there are no commercially available options suitable for remote learning). *But see* SECA Comments at 5 (stating that there is insufficient E-Rate support to fund building out in communities that lack adequate Wi-Fi service).

⁹⁶ See, e.g., #OaklandUndivided, Oakland Unified School District Comments at 6 (#OaklandUndivided, OUSD); B. Rasko Comments at 1 (noting the lack of coverage and speed provided by hotspots in some areas across the country); MCJ Comments at 5-6 (explaining that weak mobile wireless broadband services were experienced by some students); The Council Comments at 2-3; TekWav Reply at 3; Letter from Kristen Corra, Policy Counsel, SHLB, and Michael Calabrese, Director, OTI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2-3 (filed May 16, 2024) (SHLB & OTI May 16, 2024 *Ex Parte*) (stating that hotspots and mobile wireless service can be inadequate to support remote learning in rural areas and low-income urban neighborhoods).

reasonable.”⁹⁷ At this time, we do not possess the information necessary to make a broader determination, nor did any commenters sufficiently analyze the feasibility of broadening the scope of eligibility. In particular, we do not have sufficient data to rely on to establish funding caps on the equipment or service costs associated with other solutions or to establish an overall budget like the one adopted for Wi-Fi hotspots herein. At this time, we establish caps in this program on both services and equipment in order to simplify review, aid administration, and constrain costs. Commenters provided examples of costs for existing network builds, but not in a way that would allow us to establish caps or assess cost-effectiveness on costs of access points, antennas, switches, radios, customer premises equipment, backhaul, installation, RF design and planning, engineering, licenses, maintenance, software updates, and other miscellaneous charges.⁹⁸ For example, while some stakeholders urge the Commission to permit E-Rate support for applicant-enabled off-campus networks, and provide some analysis for the potential cost efficiency of such solutions,⁹⁹ they also acknowledge that these alternatives that would require much higher up-front deployment costs and rely on reaching a large number of students, school staff, and library patrons.¹⁰⁰ Even if constrained by the overall budgets adopted below, we are concerned that these alternative solutions would be challenging to review for cost-effectiveness by applicants and the Administrator without additional data and analysis. In contrast, our experiences funding Wi-Fi hotspots and mobile wireless Internet services through the ECF program have demonstrated that this particular solution can reasonably be supported.¹⁰¹ We therefore find that taking this incremental step toward supporting the off-premises educational needs of our nation’s students, school staff, and library patrons is not only in the public interest, but it is also within our legal authority. As such, we limit eligibility to commercially available mobile wireless Internet services and the Wi-Fi hotspots needed to deliver such services to an individual user.¹⁰²

26. *Per-User Limits.* Mindful of the importance of maximizing the use of limited funds, and consistent with the limitation adopted in the ECF program, we adopt a rule to prohibit an eligible school or library from applying for more than one Wi-Fi hotspot provided for use by each student, school staff member, or library patron in the E-Rate program.¹⁰³ The *NPRM* sought comment on whether we should impose per-user limitations on eligible Wi-Fi hotspots and services.¹⁰⁴ The ECF program limited support to one Wi-Fi hotspot device per student, school staff, or library patron.¹⁰⁵ Many commenters expressed

⁹⁷ 47 U.S.C. § 254(h)(2)(A).

⁹⁸ See generally Dr. Raul Katz, The “To and Through” Opportunity: An Economic Analysis of Options to Extend Affordable Broadband to Students and Households via Anchor Institutions (2022), https://assets.noviams.com/novi-file-uploads/shlb/PDFs_and_Documents/SHLB_Research_and_Publications/Raul_Katz_Economic_Study1.pdf.

⁹⁹ See, e.g., SHLB & OTI Comments at 18-20.

¹⁰⁰ See, e.g., Letter from Kristen Corra, Policy Counsel, SHLB, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 3 & n.5 (filed June 13, 2024).

¹⁰¹ See Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (reporting more than \$24 million in ECF commitments by 16 applicants for construction projects). We also note that while alternative solutions were eligible for ECF support, the overwhelming majority of ECF funding provided for connections were mobile wireless connections provided via Wi-Fi hotspots and therefore, we conclude that further data and additional analysis is required to determine the economic reasonability and to understand the potential impact of making other solutions eligible, such as fixed solutions.

¹⁰² The Commission expects these Wi-Fi hotspots and services to be accessible to and usable by students, school staff, and library patrons with disabilities, and that schools and libraries will accommodate requests by such individuals.

¹⁰³ See Appendix B, adopting 47 CFR § 54.502(e)(8).

¹⁰⁴ See *NPRM*, 2023 WL 8602208 at *8, para. 20.

¹⁰⁵ 47 CFR § 54.1706(c).

support for this approach.¹⁰⁶ In adopting a per-user limitation on these equipment and services, we seek to equitably distribute and maximize the use of limited funds and the number of students, school staff, and library patrons served.

27. *Minimum Service Standards.* We decline to adopt minimum service standards for Wi-Fi hotspots and services used off-premises at this time. While we understand commenters' requests to establish limits related to data and quality of service,¹⁰⁷ we find that adopting minimum service standards runs the risk of penalizing the students, school staff, and library patrons in places where slower speed, data capped, and/or high latency services are currently the only affordable options. Furthermore, we agree with commenters' views that schools and libraries are in the best position to know what is available and sufficient for their students', school staff members', and library patrons' remote learning needs.¹⁰⁸ We expect that schools and libraries will make the best decisions to meet the remote learning needs of their students, school staff, and library patrons.

28. *Demonstrating Cost-Effective Purchases of Wireless Services.* In making the off-premises use of Wi-Fi hotspots and mobile wireless services eligible, we conclude that the E-Rate program's current requirement that applicants demonstrate that mobile wireless services are more cost-effective than internal broadband services is not applicable to off-premises use.¹⁰⁹ The Commission adopted that requirement because schools and libraries often require substantial bandwidth connections to meet their on-premises connectivity needs, which in turn would require them to seek E-Rate support for large numbers of data plans to meet those needs that may be more expensive than other methods of providing internal broadband access for mobile devices at the school or library. Here, the Commission solely makes the off-premises use of mobile wireless services eligible at this time; and thus, we find no need to impose any such requirements for applicants seeking support for the off-premises use of wireless Internet service and the Wi-Fi hotspots needed to deliver the services. In the event that the off-premises use of additional services and equipment becomes eligible in the future, we will reconsider this approach and whether other requirements may be necessary. We also remind applicants seeking support for the off-premises use of wireless Internet services and Wi-Fi hotspots that they remain subject to the E-Rate program's competitive bidding rules when seeking support for these services and equipment, including the requirement that they select the most cost-effective service offering, using price of the eligible equipment and services as the primary factor considered.¹¹⁰

29. *Implementation.* We direct the Bureau to make Wi-Fi hotspots and Internet services eligible for E-Rate funding as part of the funding year 2025 eligible services list proceeding.¹¹¹ Additionally, in implementing these changes, we reaffirm the delegation of authority to the Bureau to interpret our rules and otherwise provide clarification and guidance regarding any ambiguity that may

¹⁰⁶ See, e.g., MCJ Comments at 4 (supporting a per-user limitation); EdLiNC Comments at 8-9 (same); ALA Comments at 11 (noting that a per-user limitation would be consistent with library lending practices); #OaklandUndivided, OUSD Comments at 4; Kajeet Reply at 2.

¹⁰⁷ See, e.g., MCJ Comments at 5 (recommending the E-Rate program only support service plans with no data limits); T-Mobile Comments at 7 (urging the Commission not to adopt rules prohibiting data caps); #OaklandUndivided, OUSD Comments at 6-8 (suggesting limitations to ensure service is sufficient for remote learning, including a minimum download speed of 5 Mbps); TekWav Reply at 3 (urging the Commission to ensure there are speed requirements and no data caps).

¹⁰⁸ See, e.g., SECA Comments at 2 (suggesting that minimum speeds and technical parameters be left to the discretion of applicants); WISPA Reply at 6 (same).

¹⁰⁹ See *FY 2024 Eligible Services List*, 2023 WL 8803733 at *11 (“[D]ata plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries.”) (citing the *2014 Second E-Rate Order*, 29 FCC Rcd at 15600, para. 156)).

¹¹⁰ 47 CFR § 54.511(a).

¹¹¹ See Appendix B, adopting 47 CFR § 54.502(f) (as amended).

arise to ensure that support for these services provided to schools and libraries further the goals we have adopted for the E-Rate program.¹¹² We also direct the Universal Service Administrative Company (USAC), the Administrator of the E-Rate program, in coordination with and under the oversight of the Bureau, to issue further guidance and training on administrative and related processes for requesting support for the off-premises use of Wi-Fi hotspots and services.

C. General Framework of a Wi-Fi Hotspot Lending Program Mechanism

30. *Wi-Fi Hotspot Lending Program Mechanism.* We now adopt a budget mechanism to allow for the equitable distribution of Wi-Fi hotspots and services to students, school staff, and library patrons. In doing so, the budget mechanism will allow eligible schools and libraries to develop hotspot lending programs, while setting a limit on the amount of support that an applicant can request for Wi-Fi hotspots and services. In the *NPRM*, we sought comment on how to establish a Wi-Fi hotspot program, recognizing that there are insufficient E-Rate funds to support a Wi-Fi hotspot and recurring service for every student, school staff member, and library patron across the nation.¹¹³ The *NPRM* also asked whether a per-student limit, like the one used for category two funding budgets, could help ensure support was distributed equitably to schools and libraries.¹¹⁴ The *NPRM* sought administratively feasible ways to prioritize support to students and library patrons without sufficient Internet access.¹¹⁵ In response, several commenters described the challenges to the approaches used in the ECF program and sought greater flexibility for schools and libraries.¹¹⁶ We also look to lessons learned from our administration of the ECF program in addressing these challenges, with particular focus on program integrity. With these considerations in mind, we adopt a budgeted approach based on a mechanism provided in the comments to create a targeted lending program that allows eligible schools and libraries to be able to request a limited number of Wi-Fi hotspot devices and services, if they have need for them, within a pre-discount budget similar to the E-Rate program's category two budgets.¹¹⁷ This approach takes into account the applicant size, using information that is already collected as part of the category two budget process, and also relies on the E-Rate program's historic focus on poverty and rurality by using the applicants' discount rates to calculate a Wi-Fi hotspot budget.¹¹⁸ Schools and libraries at higher discount rate levels will be eligible to request and receive a greater amount of E-Rate support for Wi-Fi hotspot devices and services than schools and libraries at lower discount rate levels.¹¹⁹

31. In establishing a budgeted approach to the lending program mechanism, we expect that the limited number of available Wi-Fi hotspots will more naturally be targeted to students, school staff, or library patrons with the most need.¹²⁰ The budget mechanism will allow schools and libraries to target the

¹¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Third Report and Order, 12 FCC Rcd 22485, 22488-89, para. 6 (1997) (*Universal Service Third Report and Order*).

¹¹³ *NPRM*, 2023 WL 8602208 at *12, para. 30.

¹¹⁴ *Id.* at *12, para. 29.

¹¹⁵ *Id.* at *12, para. 30.

¹¹⁶ See, e.g., Dallas ISD Comments at 4; EveryLibrary Institute Comments at 5-6; WIDPI Comments at 2 (noting that very few schools and libraries have the time or resources to conduct a survey); SHLB & OTI Comments at 28 (stating that the existing 10-year requirement is already burdensome without additional requirements); The Council Comments at 4; ALA Comments at 6-8 (explaining that recordkeeping serves as a barrier to participation in smaller, underserved communities lacking the staff capacity).

¹¹⁷ See E-Rate Central Comments at 2-3.

¹¹⁸ See *id.* at 3.

¹¹⁹ See *id.*

¹²⁰ See, e.g., E-Rate Central Comments at 2 (noting that a targeted loan program would provide funding "for those who need service the most, when they need it the most"); Letter from Lori Fisher, State Librarian, Maine State Library, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31 (filed Mar. 6, 2024) (explaining that its
(continued....)

appropriate individuals that lack broadband access; therefore, we find we do not need to adopt a survey requirement or other document collection requirement. Specifically, except in the one occasion discussed below,¹²¹ this limited lending approach will not require applicants to document whether a particular student, school staff member, or library patron has “unmet need” as we defined that term in the ECF program,¹²² relying instead on establishing a hotspot budget to prevent applicants from over-purchasing Wi-Fi hotspots and services and permitting applicants to use their judgment to determine the need in their own localities within those limits.¹²³ Instead, to ensure that use of the hotspot lending program is consistent with its objectives, we will require schools and libraries to adopt and provide notice to the Wi-Fi hotspot recipients of an acceptable use policy (AUP) that highlights that the goal of the hotspot lending program is to provide broadband access to students and library patrons who need it.¹²⁴ In combination with the applicant’s requirement to pay its non-discounted share of costs, schools and libraries will be incented to right-size their Wi-Fi hotspot and service requests. However, the details of such a hotspot lending program—such as length of lending periods and how to target the appropriate students and library patrons—will be left to the applicant to determine and tailor the hotspot lending program to their local needs.¹²⁵ For these reasons, we can streamline the procedures that caused applicants the most challenges in the ECF program, benefiting applicants, service providers, and the Administrator.

32. We find adopting this approach to be a reasonable mechanism for limiting how many Wi-Fi hotspots and connections can be requested by an applicant.¹²⁶ Specifically, applicants will be limited to

libraries “strongly adhere to the assumption that a patron who requests a hotspot, is in need of it”); WiDPI Comments at 2 (suggesting that patrons asking for a Wi-Fi hotspot “is *prima facie* evidence that they lack internet access”).

¹²¹ See *infra* para. 32 (prohibiting funding 1:1 hotspot initiatives absent individualized documentation of need).

¹²² See, e.g., WIDPI Comments at 2 (explaining that requiring a survey is too burdensome for most schools and libraries and noting that while schools may have surveyed their students during the pandemic, libraries often do not have such information about their patrons); EveryLibrary Institute Comments at 5-7 (noting the issues between ECF’s requirements and libraries’ privacy requirements); EdLiNC Comments at 7 (suggesting that current E-Rate program rules should continue to govern with respect to prioritizing for unmet needs); Dallas ISD Comments at 4 (stating that requiring a pre-certification of need or collecting AUPs would increase operational complexity and deter participation); SECA Comments at 6-7 (arguing that such requirements are unnecessary because of the non-discounted share).

¹²³ See, e.g., EdLiNC Comments at 12-13 (suggesting that schools should annually collect connectivity data for students, but it should not be required by the Commission); NACEPF & Mobile Beacon Comments at 18; OITCs Comments at 3-4; SECA Comments at 6-7.

¹²⁴ See, e.g., EveryLibrary Institute Comments at 7 (preferring a publicly posted Internet use policy to collecting signed statement); EdLiNC Comments at 13 (asserting that the FCC should encourage schools and libraries to use their normal sign-off processes when disseminating technology, rather than requiring parent certification). We recognize that “acceptable use policies” are also referred to as “eligible use policies.” For ease, we use the term “acceptable use policy” throughout, but consider them to be the same and expect program participants to treat them similarly for purposes of implementing any of the relevant requirements we adopt today. See *infra* at Section E.1.

¹²⁵ See, e.g., E-Rate Central Comments at 4 (suggesting that hotspot loan terms should be left to the discretion of the schools and libraries); ALA *Ex Parte* at 1 (explaining that a typical hotspot lending period is three weeks but that different loan periods can be used to accommodate “different needs for different individuals”).

¹²⁶ The funding formula discussed in paragraph 36 would approximately limit the funding for hotspots to between 4% to 18% of a school’s student total with the variation being due to the category one discount rate for the entity. Based on publicly available surveys, this would be reasonably consistent to meet the needs of students with limited access to broadband service at home. Pew Research Center finds that for students whose school closed in response to the Covid-19 pandemic, 22% of students had to rely on public Wi-Fi because of limited reliable service at home. Pew Research Center, 53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak at 6 (2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak> (“Overall, roughly one-in-five parents with homebound schoolchildren say it is very (continued....)”).

a budget based on their full-time student count or library square footage, and their category one discount rate. In doing so, we establish bright line limits that are fair and equitable—allowing eligible schools and libraries to request Wi-Fi hotspots and service, but limiting the pool of Wi-Fi hotspots and service lines an applicant can request based on its discount rate and school or library size. This will allow schools and libraries to request funding for a Wi-Fi hotspot lending program that can provide wireless Internet service to its students, school staff, and library patrons when it is needed most. We prohibit one situation based on our experience in the ECF program—using Wi-Fi hotspots as part of a one to one (1:1) hotspot initiative, where every student receives a Wi-Fi hotspot. We recognize that even under the limiting mechanism, applicants might have a sufficient Wi-Fi hotspot budget that they could try to focus them all to a 1:1 initiative at a single low-income school in a district or a particular grade (e.g., all juniors). Generally, applicants are prohibited from seeking E-Rate support for a 1:1 hotspot initiative like this and will be required to certify on the FCC Form 471 application that the hotspots and service will not be used for a 1:1 hotspot initiative. If E-Rate-funded Wi-Fi hotspots are used as part of a 1:1 initiative – either in practice by providing all of the devices to a single school in the district or in conjunction with Wi-Fi hotspots funded via other sources, applicants must document clearly (i.e., individual survey results or attestations) that each individual student needed a Wi-Fi hotspot, in accordance with the AUPs, and may not rely on general or estimated findings about income levels. Funding disbursements for applicants without specific documentation to support a 1:1 Wi-Fi hotspot initiative will be subject to denial and/or recovery.

33. *Wi-Fi Hotspot and Services Funding Caps.* We first adopt pre-discount funding caps on the amounts that can be requested for services and hotspot equipment in the E-Rate program. Specifically, we adopt a pre-discount \$15 per month limit on recurring mobile wireless Internet service and a pre-discount \$90 per Wi-Fi hotspot limit, based on the median cost of monthly services and Wi-Fi hotspots purchased in the ECF program.¹²⁷ Taxes and state electronic waste fees are not included in the cap,¹²⁸ while other reasonable costs such as delivery fees, activation, and configuration costs are included in the capped amounts. All taxes and fees should be separately identified on invoices and requested on a separate funding line. In the *NPRM*, we sought comment on cost control mechanisms, including funding

or somewhat likely their children will not be able complete their schoolwork because they do not have access to a computer at home (21%) or have to use public Wi-Fi to finish their schoolwork because there is not a reliable internet connection at home (22%).”). Similarly, during the pandemic, 14% of parents had to access public Wi-Fi because there was no reliable connection to the home. This figure was 4% in high-income households and 23% in lower income households. See C. McClain, *The Internet and the Pandemic, Parents, Their Children and School During the Pandemic*, Pew Research Center (2021), <https://www.pewresearch.org/Internet/2021/09/01/parents-their-children-and-school-during-the-pandemic/>.

¹²⁷ See Universal Service Administrative Company, Emergency Connectivity Fund FCC Form 471, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (reporting data on Wi-Fi hotspot devices and services that have been requested in the ECF program to date). The median cost of Wi-Fi hotspots funded through the ECF program is \$90 per device, and the median cost of mobile wireless services per user, per year is \$15 per user, per month, for twelve months. The funded cap calculations are based on contract price weighted by the quantity requested, rounded to the nearest dollar increment. Special use Wi-Fi hotspots and those that were associated with vehicles were excluded from the analysis as well as a share of mobile wireless services that may have been sold bundled with other services. Because of the cost of some Wi-Fi hotspots at the upper range of the ECF funding cap, we find the median a more appropriate choice, and note the median costs are not significantly different than the average ECF costs of \$107.80 per device and \$15.44 per month. *NPRM*, 2023 WL 8602208 at *10, para. 23 n.76. But see Letter from Amy E. Bender, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 1 (filed July 10, 2024) (*CTIA Ex Parte*) (urging the Commission to increase the funding caps); SHLB July 11, 2024 *Ex Parte* Letter at 4-5 (suggesting recurring service rates as high as \$40 per month).

¹²⁸ See NACEPF & Mobile Beacon Comments at 16 (noting that the numbers cited in the *NPRM* did not include taxes). State-imposed electronic waste (“e-waste”) fees were treated as taxes for the purposes of the ECF program, and will be treated the same in the E-Rate program.

caps on Wi-Fi hotspots or services.¹²⁹ Some commenters support a cap on the Wi-Fi hotspots and services,¹³⁰ with some suggesting that the averages from the ECF program would be an appropriate place to start.¹³¹ Others disagreed, suggesting that competitive bidding and the applicants' non-discounted share of costs requirement would be sufficient, with some cost-effectiveness checks during the Program Integrity Assurance (PIA) review process.¹³²

34. On balance, we agree with commenters suggesting that funding caps will more effectively ensure equitable distribution of Wi-Fi hotspots, drive more cost-effective purchasing within the E-Rate program, and reduce the likelihood that these costs become unsustainable.¹³³ We also expect that clear funding caps will lead to a more streamlined review of these funding requests, simplifying administration of these requests. For example, we disagree with commenters that unreasonable costs are easily taken up in the PIA reviews,¹³⁴ when the data we have from the ECF program and the record in this proceeding shows a large variation in costs depending on service provider, technology type, and how contracts are structured.¹³⁵ Setting funding caps will also reduce concerns about applicants selecting multiple service offerings in instances where a single service provider will not be able to cover the entire coverage area.¹³⁶ In these instances, the program's competitive bidding rules would otherwise be less effective in ensuring cost-effective purchasing when applicants may need multiple service providers in order to provide coverage options in various geographic parts of the student or library patron community.¹³⁷ By using a funding cap, applicants that select multiple service providers will still be capped at a cost-effective price, even if they require selection of service offerings that may be more expensive.

35. Consistent with the ECF program, applicants are permitted to select a Wi-Fi hotspot or

¹²⁹ *NPRM*, 2023 WL 8602208 at *10, para. 23 n.80.

¹³⁰ *See, e.g.*, ACSA-CSBA Comments at 3 (ACSA-CSBA) (suggesting the adoption of inflation-adjusted spending caps consistent with the average of such costs in California); CASBO Comments at 3 (supporting a per-student cap); NCTA Comments at 11 (supporting a per-student limit "to preserve E-Rate resources for other uses"); TekWav Reply at 5 (urging the FCC to consider the existing practices when establishing funding caps).

¹³¹ *See, e.g.*, EdLiNC Comments at 9-10 (suggesting that ECF averages should be given significant weight in determining an initial cap); NACEPF & Mobile Beacon Comments at 1 (agreeing with the EdLiNC assessment).

¹³² *See, e.g.*, ALA Comments at 12 (recommending that standard E-Rate processes apply, including competitive bidding, state and local procurement policies, and discounts); Dallas ISD Comments at 4 (stating that the non-discounted share and competitive bidding rules are effective methods to control costs); WIDPI Comments at 2 (recommending use of competitive bidding and non-discounted share to control costs, while considering soft targets over which additional review would be warranted).

¹³³ *See, e.g.*, CASBO Comments at 3 (supporting a cap to ensure equitable distribution); EdLiNC Comments at 9-10 (providing support for a cap as a means "to ensure that new E-Rate services do not become an unsustainable burden").

¹³⁴ *See, e.g.*, ALA Comments at 12 (suggesting that if costs seem unreasonable, PIA reviewers can contact the applicant and inquire about the higher than usual funding).

¹³⁵ *See, e.g.*, NACEPF & Mobile Beacon Comments at 17 (noting a wide range in costs from between \$57 and \$459, depending on the technology type and other factors). *See* Universal Service Administrative Company, Emergency Connectivity Fund FCC Form 471, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (showing a wide range in costs for hotspots, but over 62.73% percent funded at less than \$90).

¹³⁶ *NPRM*, 2023 WL 8602208 at *10, para. 24; *see also, e.g.*, Dallas ISD Comments at 4 (explaining that variations in network coverage and other factors may require the use of multiple carrier networks).

¹³⁷ Additionally, we are not persuaded that it is necessary to adopt prohibitions on competitive bidding on a district-wide or consortia basis and leave this to each applicant to determine. *See* Letter from Michael Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2 (filed July 9, 2024) (*NTCA Ex Parte*).

service that costs more than the funding caps,¹³⁸ but E-Rate commitments will not exceed the funding caps. We expect the E-Rate program's competitive bidding rules to aid applicants in selecting the most cost-effective service offerings,¹³⁹ but we also direct USAC to examine costs that do not appear to be cost-effective, based upon other costs within the program or other commercially available offerings.¹⁴⁰ Although we are adopting funding caps for recurring services and Wi-Fi hotspots to help control overall costs to the E-Rate program, we expect applicants to request E-Rate support based on actual, commercial-based costs. For example, an applicant cannot request funding at the cap levels, but purchase Wi-Fi hotspots and recurring services at lower costs and allow service providers to keep the difference in costs as their profit or windfall. We will also require service providers to certify that the costs of the Wi-Fi hotspots do not exceed commercial value. USAC is permitted to modify or reduce such funding requests, as appropriate, to reflect the actual, market-based price of commercially-available Wi-Fi hotspots and to seek recovery in the event of a later determination that the E-Rate funded costs were higher than the actual costs of the requested Wi-Fi hotspots and/or recurring services.

36. *Calculating Budgets.* Next, we establish a formula to calculate a three-year pre-discount Wi-Fi hotspot and service budget, limiting the amount of E-Rate support that can be requested by an applicant for Wi-Fi hotspots and recurring service over three funding years. E-Rate Central suggests adopting a formula modeled after the category two budgets that limits applicants to 20 hotspots per 100 students and 5.5 hotspots per 1,000 library square feet, adjusted by discount rate.¹⁴¹ Using this proposed formula and multiplying the result by the three-year cost of the funding caps (\$630),¹⁴² applicants will calculate a three-year Wi-Fi hotspots and service budget. This is the maximum amount of pre-discount funding permitted for Wi-Fi hotspots and/or service over three funding years.¹⁴³ E-Rate Central proposed limiting the quantity of Wi-Fi hotspots and services, but there are important benefits to calculating a maximum Wi-Fi hotspot budget for several reasons. One, a budget will allow schools and libraries greater flexibility in spending by allowing applicants to request funding for the most appropriate mix of Wi-Fi hotspots and service, depending on their needs. Two, a budget will provide applicants better incentives to make cost-effective purchases by permitting them to purchase higher quantities if there are lower costs. Three, budgets will also facilitate use of existing Wi-Fi hotspots purchased through the ECF program or with other federal funds that are still functional by permitting applicants to purchase higher quantities of service requests, if needed. Applicants that select lower-cost Wi-Fi hotspots, or that find ways to maintain Wi-Fi hotspots for longer, will be able to request a larger quantity of E-Rate supported hotspots or lines of service depending on their individual needs and budget.

¹³⁸ *ECF Order*, 36 FCC Rcd at 8730-31, para. 69.

¹³⁹ 47 CFR §§ 54.503(c)(2)(ii)(B); 54.511(a).

¹⁴⁰ *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26431-32, paras. 53-54 (2003) (*Ysleta Order*) (noting applicants are required to select cost-effective services, even in instances where an applicant receives only one bid).

¹⁴¹ See E-Rate Central Comments at 2 (suggesting applicants be limited to 20 hotspots per 100 students and 5.5 hotspots per 1,000 library square feet).

¹⁴² To calculate \$630, we use the \$90 funding cap for the Wi-Fi hotspot and add 36 months of capped \$15 monthly service. See *supra* para. 33 (establishing funding caps).

¹⁴³ To clarify, the calculation uses the applicant discount rate to come up with an overall Wi-Fi hotspot budget. That Wi-Fi hotspots budget is a *pre-discount* budget, which means that applicants with a higher discount rate will receive a larger discount on the same amount of Wi-Fi hotspots and services. This provides applicants with a higher rate of poverty or rurality with a higher budget than an applicant with a lower rate of poverty or rurality. See SHLB July 11, 2024 *Ex Parte* Letter at 6 (seeking clarification on the “pre-discount” budgets).

$$\text{Independent School or District Budget} = \left[\text{student count} \times \frac{20 \text{ hotspots}}{100 \text{ students}} \times \text{C1 discount rate} \right] \times \$630$$

$$\text{Library or Library System Budget} = \left[\text{square feet} \times \frac{5.5 \text{ hotspots}}{1000 \text{ square feet}} \times \text{C1 discount rate} \right] \times \$630$$

Note: The value in the brackets above for both the schools and libraries budgets is rounded up to the nearest ten.

37. *Calculating Independent School and School District Hotspot Budgets.* Independent schools and school district applicants will calculate their Wi-Fi hotspot and service budgets by multiplying their student counts by 20% (i.e., 20 hotspots per 100 students), and adjusting by their category one discount rates.¹⁴⁴ This number is rounded up to the nearest ten. The applicant then multiplies that rounded number by \$630 to determine the three-year budget. For example, an independent school with 500 students and a 90% discount rate would have a three-year, pre-discount budget of \$56,700, while a school district with 500 students and a 40% discount rate would have pre-discount budget of \$25,200.¹⁴⁵ Unlike the ECF program, these limits will reduce the number of hotspots that could be requested from the start, requiring schools and districts to make choices about how to distribute and prioritize access for students with the greatest need or set lending terms that allow students to access devices at times when need is high. To the extent that the formula needs adjustments, we provide a means for future changes as discussed below, but expect that the benefits of a single formula applicable to all school applicants will be simpler and more administrable than attempting to find a precise number for different types of applicants and will greatly decrease burdens on applicants and the Administrator than if different formulas were adopted dependent upon type of school applicant.

38. *Calculating Independent Libraries and Library System Hotspot Budgets.* Likewise, independent libraries and library systems would calculate their Wi-Fi hotspots and service budgets using their square footage,¹⁴⁶ allowing 5.5 devices per 1,000 square feet, adjusted by their category one discount rates. This number is rounded up to the nearest ten. The applicant then multiplies that rounded number by \$630 to determine the three-year pre-discount budget. For example, an independent library of 10,000 square feet at the 90% discount rate would have a three-year pre-discount budget of \$31,500, while a library system with 100,000 square feet and a 90% discount rate would have a three-year pre-discount budget of \$315,000.¹⁴⁷ Smaller libraries would thus be eligible for at least 10 devices and services lines, while larger library systems would be eligible for more. Like schools, we adopt this formula in order to allow libraries to plan for and determine how and whether to request E-Rate support for a library hotspot lending program. We adopt the factor suggested in the comments, which is roughly based on the ratios

¹⁴⁴ See E-Rate Central Comments at 2 (suggesting school applicants be limited to 20 hotspots per 100 students).

¹⁴⁵ The calculations, as shown, provide for a budget based on student count, and taking poverty and rurality into account. The calculation for the 90% discount rate school is: $[500 \text{ students} \times 0.2 \times 0.9] \times \$630 = \$56,700$. The calculation for the 40% discount rate school district is: $[500 \text{ students} \times 0.2 \times 0.4] \times \$630 = \$25,200$.

¹⁴⁶ See E-Rate Central Comments at 2 (suggesting library applicants be limited to 5.5 hotspots per 1,000 library square feet).

¹⁴⁷ The calculations, as shown, provide for a larger budget based on library size, poverty, and rurality. The calculation for the smaller library is: $[10,000 \text{ square feet} \times 5.5/1000 \times 0.9] \times \$630 = \$31,500$, while the calculation for the library system is $[100,000 \text{ square feet} \times 5.5/1000 \times 0.9] \times \$630 = \$315,000$. Note that in this second library system calculation, the bracketed formula was rounded up from 495 to the next ten, or 500 before being multiplied by \$630.

developed in the category two budgets for schools and libraries,¹⁴⁸ but also adopt a means to adjust the formula in the future should the library factor be insufficient for library patron access, particularly in areas of the country where there may be higher need, but small libraries, such as rural-remote areas.

39. For purposes of the calculation, full-time student count and square footage figures will be calculated at the district-wide or library system level in order to make use of existing information collections and procedures.¹⁴⁹ Independent schools may apply using entity-level student counts.¹⁵⁰ In doing this, we seek to use data that is already collected on the FCC Form 471 application for the applicants' category two budgets. Similarly, we will allow an applicant to rely on a validated category two student count or square footage figure for purposes of the Wi-Fi hotspot limiting mechanism.¹⁵¹ Relying on information already collected and validated for category two purposes will reduce burdens on applicants and the Administrator. For funding year (FY) 2025 through FY 2027, schools and school districts with a validated category two student count could rely on that number (and similarly, libraries with a validated square footage), but would need to revalidate student counts in the next three-year Wi-Fi hotspot funding cycle (i.e., FY 2028 through FY 2030).¹⁵²

40. We also will use fixed three-year budget cycles, after which the budgets will reset, beginning with funding years 2025 through 2027.¹⁵³ Based on the experience with category two budgets,

¹⁴⁸ A library with approximately 3711.1 square feet would be eligible (in the absence of the funding floor) for a category two budget of \$16,700, or roughly equivalent to the budget for a school with 100 students. Thus, using the equivalent category two ratio, the library would be eligible for approximately 5.5 devices per 1,000 square feet.

¹⁴⁹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 34 FCC Rcd 11219, 11229-30, 11234, paras. 26, 40 (2019) (*Category Two Order*) (using full-time student counts for district-wide category two budgets). Independent schools with part-time students only will be eligible for Wi-Fi hotspots by counting these students as full-time students consistent with guidance provided under category two budget rules. *See Wireline Competition Bureau Provides Guidance on E-Rate Program Category Two Budgets*, WC Docket No. 13-184, Public Notice, 35 FCC Rcd 11508, 11509-10 (WCB 2020) (*Category Two Guidance Public Notice*).

¹⁵⁰ Consistent with the category two budget rules, if state law considers a charter school to be part of a school district, the charter school will be presumed to be a part of the district for purposes of calculating the category two budget and discount rate, unless the charter school demonstrates financial and administrative independence from the district, in which case it will have its own separate category two budget and discount rate. *See Category Two Guidance Public Notice*, 35 FCC Rcd at 11508-11509.

¹⁵¹ As a reminder, applicants are required to validate their category two student counts in the first funding year in which they seek category two E-Rate support. That number can then be relied upon for purposes of the category two budget for the entirety of the five-year funding cycle, unless the applicant decides to seek a category two recalculation. *See Category Two Order*, 34 FCC Rcd at 11236, para. 44; 47 CFR § 54.502.

¹⁵² These student count or square footage numbers must align with the category two budgets. Therefore, if a category two student count or square footage number has already been validated when an applicant applies for Wi-Fi hotspots in FY 2028, that is the applicable student count or square footage number for the hotspot budget. If an applicant has not requested funding for category two services, applicants will be required to validate student counts or square footage in the first funding year that they request Wi-Fi hotspots or services. We note, however, that the Administrator may continue to ask for additional information regarding an applicant's student count or square footage to verify the number during its reviews as necessary.

¹⁵³ For purposes of the calculation, applicants will use their category one discount rate for the first funding year that they request Wi-Fi hotspots or associated services. The calculation will remain the same for the three-year funding period. For example, if an applicant requests funding in FY 2025, the budget will be calculated using the existing full-time student enrollment and the FY 2025 discount rate and remain the same through FY 2027. If an applicant does not request Wi-Fi hotspots and associated service until FY 2027, the calculation would only last one year, before resetting in the next three-year cycle (FY 2028). We direct USAC to develop an open data tool, similar to the Category Two Budget Tool, to help applicants determine their forecasted, preliminary, and confirmed hotspot budgets. *See* Universal Service Administrative Company, Emergency Connectivity Fund FCC Form 471, E-Rate C2 Budget Tool Data FY2021+, https://opendata.usac.org/E-Rate/E-Rate-C2-Budget-Tool-Data-FY2021-/6brt-5pbv/about_data (last visited July 15, 2024) (calculating category two budgets in various stages).

we believe a fixed cycle will reduce applicant confusion and simplify administration. Entities are allowed to spread out their requests for Wi-Fi hotspots and services over the three-year timeframe, as long as the total pre-discount amount does not exceed the budget over the three funding years.¹⁵⁴ Entities may request support for Wi-Fi hotspot service even if the associated Wi-Fi hotspots were not directly funded under the new E-Rate rules. However, applicants may not request more than 45% of its three-year budget in any year. We find this valuable in order to prevent applicants with high numbers of existing Wi-Fi hotspots from simply using the entire budget in a single funding year.¹⁵⁵ We will also require that such services must be competitively bid prior to requesting E-Rate support pursuant to the program's competitive bidding rules.¹⁵⁶

41. We emphasize that the hotspot budget represents the maximum pre-discount amount an applicant may request across three funding years, rather than an allocation of funding for Wi-Fi hotspots and service lines for which an applicant is entitled reimbursement. Applicants should evaluate whether there is need in their own school and library communities and what can be effectively used and tracked in compliance with program rules.¹⁵⁷ Applicants will also continue to be subject to the E-Rate program rules requiring that schools and libraries are responsible for paying the non-discounted share of the costs.¹⁵⁸ The intent of this hotspot lending program is for the Wi-Fi hotspots to be available for loan to and for use by students, school staff, or library patrons without sufficient broadband access at home and other off-campus locations for educational purposes. Applicants and service providers will be subject to E-Rate program rules, certifications, and other requirements designed to protect program integrity, as discussed in further detail below.

42. Applicants may not request funding for Wi-Fi hotspots for future use or to be stored in case of an emergency, and we will not allow applicants to purchase Wi-Fi hotspots to store in case of theft, loss, or breakage.¹⁵⁹ Each Wi-Fi hotspot must be associated with a line of service.¹⁶⁰ We recognize the concerns from commenters about replacing Wi-Fi hotspots,¹⁶¹ but based on lessons from the ECF program, determine that a streamlined approach would be simpler to administer, provide clarity for applicants, and ensure limited E-Rate program funds are used appropriately. In the event of loss or breakage, applicants may purchase extra devices with other sources of funding to use with the E-Rate-supported service or they can request replacement devices paired with lines of service in the next funding

¹⁵⁴ The limiting mechanism is only applicable to Wi-Fi hotspots funded through the E-Rate program and does not factor in devices funded through the ECF program or through other sources of funds.

¹⁵⁵ *But see* SHLB July 11, 2024 *Ex Parte* Letter at 5-6 (arguing that removing the 45% threshold would better meet individual applicant needs because it adds unnecessary complexity and does not accommodate the “readiness” levels of each school and library participating in the lending program).

¹⁵⁶ This is consistent with E-Rate competitive bidding requirements for applicants requesting school bus Wi-Fi services, even in instances where the applicant previously entered into multi-year contracts in the ECF program. *See FY 2024 Eligible Services List*, 2023 WL 8803733 at *5, para. 13, n.53. ECF-funded Wi-Fi hotspot contracts are not grandfathered, but applicants may seek competitive bids for services to be delivered via ECF- or other separately-funded Wi-Fi hotspots.

¹⁵⁷ *See e.g.*, ALA *Ex Parte* at 2 (noting that libraries in Maine “determine need [for Wi-Fi hotspots] by assessing patron demand through methods used for other materials that circulate”).

¹⁵⁸ 47 CFR § 54.523.

¹⁵⁹ *See infra* para. 58. Applicants will be required to certify on the FCC Form 471 application that the hotspots will not be used for these purposes. *See* Appendix B, adopting 47 CFR § 54.504(a)(1)(xii) (as amended).

¹⁶⁰ Applicants may request Wi-Fi hotspots and service together or service only, but Wi-Fi hotspots without an associated service line will not be eligible for funding.

¹⁶¹ *See, e.g.*, ALA Comments at 11 (noting that hotspots will need to be replaced over time); The Council Comments at 4 (urging caution with regard to limits on hotspot eligibility over a certain timeframe due to loss, theft, or breakage); SHLB & OTI Comments at 28 (stating that limiting purchases to a three-year timeframe could leave applicants unable to replace stolen or damaged equipment).

year if they have not exhausted their budgets. We caution, however, that applicants that do not replace lost or broken hotspots must work with their service providers to discontinue the associated service within a reasonable amount of time of becoming aware of the issue (e.g., 30 days). In order to ensure the E-Rate program is not paying for services that sit unused for these or other reasons, we will require service providers to exclude or waive any associated early termination fees for the services to Wi-Fi hotspots being funded with E-Rate support that are lost, broken, or unused and can no longer be distributed to students, school staff, or library patrons.¹⁶² We remind applicants that they must document information about lost or broken equipment in the asset inventory containing details about each Wi-Fi hotspot.¹⁶³

43. In combination, we expect this three-year pre-discount budget mechanism and the funding caps to be effective in ensuring that schools and libraries with students, school staff, and library patrons with need have access to E-Rate funding to effectively set up and request funding for hotspot lending programs, while protecting the Universal Service Fund from overspending and reducing administrative burdens, as compared to the ECF program.¹⁶⁴ At the same time, we are cognizant that a one-size formula for limiting hotspot requests may not fit every school and library and may need to be adjusted if it is impacting program participation.¹⁶⁵ As such, we delegate to the Bureau, working with the Office of Economics and Analytics, the ability to adjust the limiting mechanism quantities (i.e., 20 per 100 students and 5.5 per 1,000 square feet) as well as the funding caps in future funding years or future three-year budget cycles, after seeking comment on such an adjustment.¹⁶⁶ We also delegate to the Bureau the authority to resolve technical, procedural, and administrative issues that may arise in connection with this formula.

D. Categorization/Prioritization

44. In the *NPRM*, the Commission sought comment on what category of service should be used for wireless Internet service and the Wi-Fi hotspots needed to deliver the service, as well as how to prioritize such services should demand for E-Rate support exceed the annual funding cap.¹⁶⁷ Consistent with the existing eligible services list,¹⁶⁸ wireless Internet services will be listed as eligible as a category one service, and will not be subject to the category two budgets. Wi-Fi hotspots will be eligible as category one network equipment necessary to make category one wireless Internet services functional. We agree with commenters arguing that it should be eligible as category one, consistent with the treatment of supporting equipment necessary to sustain connectivity.¹⁶⁹

45. At the same time, in the event that demand for E-Rate support exceeds available funding, we also adopt a rule to fund requests for eligible off-premises use of Wi-Fi hotspots and services after requests for eligible on-premises services, inclusive of both category one and category two services.¹⁷⁰ Based on recent funding years and the limits that we are adopting on Wi-Fi hotspot and recurring service

¹⁶² See SECA Comments at 10-11 (asking that the Commission mandate or encourage service providers to allow for cancellation or suspension of service without requiring early termination charges).

¹⁶³ See *infra* Section III.E.3.

¹⁶⁴ *Infra* note 329.

¹⁶⁵ See, e.g., EdLiNC Comments at 2-3 (recommending setting caps that can continue to be evaluated); T-Mobile Comments at 5 (raising concerns about setting caps or limits that could stifle program participation).

¹⁶⁶ In the event that the data received in the first three years of the Wi-Fi hotspot lending program does not reflect market costs of such equipment and services, the Bureau can reassess these funding caps.

¹⁶⁷ *NPRM*, 2023 WL 8602208 at *12, paras. 28-29.

¹⁶⁸ Category one services generally include data transmission and Internet access services. See *FY 2024 Eligible Services List*, 2023 WL 8803733 at *8. 47 CFR § 54.502(a)(1).

¹⁶⁹ *NPRM*, 2023 WL 8602208 at *12, para. 28. See T-Mobile Comments at 3-4.

¹⁷⁰ See Appendix B adopting 47 CFR § 54.507(f) (as amended) (funding off-premises use of mobile wireless services after on-premises category one and category two services).

requests,¹⁷¹ we do not expect the changes we adopt today to cause demand to exceed the E-Rate funding cap.¹⁷² However, we agree with commenters that this approach will ensure that on-campus E-Rate funding is available and predictable for schools and libraries in future funding years.¹⁷³ In making this determination, we also apply it to requests for funding for off-premises use of school bus Wi-Fi services.¹⁷⁴ Mobile wireless broadband connectivity for school buses is also eligible as a category one service, but as an off-premises wireless Internet service, it will be funded after eligible on-premises services should demand exceed the E-Rate annual funding cap.¹⁷⁵ This appropriately treats these off-premises wireless Internet services and the equipment needed for the connectivity in the same manner and ensures that future demand for these off-premises services does not make access to on-premises broadband connectivity to and within the schools and libraries less predictable.¹⁷⁶

E. Safeguards

46. Next, mindful of our obligation to protect the integrity of the E-Rate program and be a careful steward of these limited funds, we adopt a number of safeguards aimed at ensuring compliance with our rules and strengthening program integrity. In deciding whether and which measures to adopt, we consider a variety of factors, including, importantly, the intended purpose for which this funding is available, our experience with the ECF program, and commenters' concerns regarding the burdens associated with and feasibility around adopting such protections. We also rely on and leverage existing tools to ensure compliance with our rules, such as our audit procedures and competitive bidding, non-discounted share of costs, and discount rate rules. Coupled with those protections already built into the design of the mechanism we establish today for the distribution of Wi-Fi hotspots and services, we seek to protect the Fund, and we reiterate our commitment to identify and pursue instances of waste, fraud, and abuse, including recovery of improperly disbursed funds where appropriate.

1. Educational Purposes

47. In the *NPRM*, we sought comment on ways to ensure that the off-premises use of Wi-Fi hotspots and services primarily serves an educational purpose consistent with the Commission's rules and

¹⁷¹ See *supra* para. 36.

¹⁷² We acknowledge the commenters who request that the new off-premises services made eligible herein be prioritized after equipment and services needed for cybersecurity. See, e.g., LAUSD Comments at 2-3; SECA Comments at 4; NCTA Comments at 11. However, we note that the Commission has created a separate pilot program to support the costs associated with cybersecurity equipment and services for schools and libraries. See *generally Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Report and Order, FCC 24-63, 2024 WL 3010578 (June 6, 2024). In the event such cybersecurity services and equipment become eligible for E-Rate support in the future, the Commission can address these prioritization concerns at that time.

¹⁷³ See, e.g., LAUSD Comments at 2-3 (encouraging the Commission to ensure schools and libraries continue to have access to important on-campus connectivity); SECA Comments at 4-5 (suggesting that off-campus requests be funded after category one and two funding requests are fully funded); NCTA Comments at 11 (stating the Commission should adopt safeguards to prioritize Wi-Fi hotspots after category one and two services); WISPA Reply at 5-6 (supporting comments recommending prioritization of off-campus services after on-campus funding requests).

¹⁷⁴ See *generally School Bus Wi-Fi Declaratory Ruling*, 2023 WL 8586523.

¹⁷⁵ *FY 2024 Eligible Services List Order*, 2023 WL 8803733 at *3, para. 8; see also Appendix B adopting 47 CFR § 54.507(f), which will be effective 30 days after Federal Register publication.

¹⁷⁶ We note that under current rules, library bookmobiles are eligible for wireless services in some states to the extent that state law considers them libraries. Those services would continue to be considered on-premises category one services if libraries request them in that manner. We also clarified above that the cost-effectiveness test required in the eligible services list applies only to on-premises use and is not required for this off-premises hotspot lending program. See *supra* para. 28; *First 2014 E-Rate Order*, 29 FCC Rcd at 8898-8922, paras. 76-133.

section 254(h)(1)(B) of the Communications Act.¹⁷⁷ Specifically, we asked whether requiring schools and libraries to certify on their forms that E-Rate support is being used primarily for this purpose is sufficient or if additional safeguards should be imposed to protect against improper use.¹⁷⁸ Based on our experience with the ECF program and recognizing that the off-premises use of Wi-Fi hotspots and services raises novel challenges about ensuring their proper use, we find that adopting additional safeguards is necessary to ensure that E-Rate program funds are used for their intended purpose and to protect the integrity of the program. In so doing, we reject those views expressed by commenters that the existing certifications are sufficient safeguards,¹⁷⁹ and that ensuring the proper use of Wi-Fi hotspots and services off-premises is overly burdensome or impractical.¹⁸⁰

48. We remind applicants that E-Rate program rules require schools and libraries to use E-Rate-supported services, including Wi-Fi hotspots and services used off-premises, primarily for educational purposes.¹⁸¹ Thus, in addition to requiring schools and libraries to use the existing E-Rate certifications to ensure that the off-premises use of E-Rate-funded Wi-Fi hotspots and services is primarily for an educational purpose,¹⁸² we require applicants to maintain and—where necessary—update their acceptable use policies (AUPs) to clearly state that this off-premises use must be primarily for an educational purpose as defined by our rules.¹⁸³ With respect to schools, this means that the acceptable use policy must state that the use must be “integral, immediate, and proximate to the education of students.”¹⁸⁴ Similarly, for libraries, the acceptable use policy must clearly state that the use must be “integral,

¹⁷⁷ *NPRM*, 2023 WL 8602208 at *14, para. 35; *see also* 47 U.S.C. § 254(h)(1)(B); 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v) (requiring applicants to certify that E-Rate-supported services will be used primarily for educational purposes).

¹⁷⁸ *NPRM*, 2023 WL 8602208 at *15, para. 36.

¹⁷⁹ *See, e.g.*, EPIC Reply at 4 (stating that the “Commission should go no further than requiring that schools and libraries...certify compliance on program forms that they will be used for educational purposes”), 8 (urging that the Commission “require at most a certification from the distributing school or library that devices are used for ‘primarily’ educational purposes”); NACEPF & Mobile Beacon Comments at 12-13, 21-22 (maintaining that “the FCC’s existing rules properly allow educators to determine how best to ensure that off-premises services are used for educational purposes”); EveryLibrary Institute Comments at 7. *But see* ACA Connects – America’s Communications Association Comments at 9 n.27 (ACA Connects) (stating that it “does not believe [a] certification alone will be sufficient to ensure compliance with section 254(h)(1)(B), as it will not allow the Commission to adequately confirm that the hotspot devices are being used for educational purposes”).

¹⁸⁰ *See, e.g.*, ACA Connects Comments at 3 (stating that the NPRM “downplays or overlooks the practical difficulties of ensuring that hotspots are used ‘primarily for educational purposes’”), 8 (noting that the Commission “does not offer any realistic mechanism to ensure that [Wi-Fi hotspots and wireless broadband connectivity are used primarily for educational purposes]”), 9 (claiming that ensuring that hotspots be primarily used for educational purposes is too difficult and unlikely given the amount of time students spend using the Internet for recreational use and notwithstanding any requirement that users adhere to AUPs or that they log on with unique user credentials); NTCA–The Rural Broadband Association Comments at 6-7 (NTCA) (asserting that “there is no practical way for schools to ensure any and every hotspot...is used solely for educational purposes” and noting that it may be even more difficult for libraries to do so); *see also* WISPA Reply at 7, 8-9 (expressing doubt that the Commission can adequately develop and enforce the proposed expansion of the E-Rate program to ensure that hotspots are used primarily for educational purposes).

¹⁸¹ 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v).

¹⁸² *See id.*

¹⁸³ As noted above, we also require that these acceptable use policies state that the Wi-Fi hotspots and services are being provided to students, school staff, and/or library patrons who need broadband access. *See supra* Section III. C., para. 31 & note 125.

¹⁸⁴ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17; 47 CFR § 54.500.

immediate, and proximate to the provision of library services to library patrons.”¹⁸⁵

49. While the Commission’s rules require schools and libraries to ensure the use of E-Rate-funded services align with these purposes, the Commission has long-recognized that schools and libraries are in the best position to determine what guidelines and restrictions should govern the appropriate use of their networks and other technology.¹⁸⁶ We did not find the need to impose any other restrictions or specifications in the ECF program,¹⁸⁷ and we agree with commenters that schools and libraries are appropriately positioned to make determinations about acceptable use in their communities.¹⁸⁸ Applicants are subject to the requirements under the Children’s Internet Protection Act, which requires local educational agencies and libraries to establish specific technical protections before allowing network access.¹⁸⁹ In establishing such protections, applicants often create AUPs that outline expected user behaviors.¹⁹⁰ For example, schools in Virginia are “required to establish guidelines for appropriate technology use” and AUPs must, among other things, state “the educational uses and advantages of the Internet” and identify “prohibited forms of technology-based applications and hardware use.”¹⁹¹ School staff and students are also required to “monitor the use of technologies for grade-level and content appropriateness, ethics, and safety.”¹⁹² Similarly, Maine State Libraries are encouraged to have an AUP in place for technology that is available for patron use and to review these policies with library staff.¹⁹³ We expect that schools and libraries will implement content and user network restrictions consistent with

¹⁸⁵ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17; 47 CFR § 54.500.

¹⁸⁶ See 47 CFR § 54.520(c)(4) (requiring local determination and providing that “[n]o agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, school district, local educational agency, library, or other authority, or consider the criteria employed by the certifying school, school board, school district, local educational agency, library, or other authority”). As such, we do not require that these AUPs impose any other restrictions or specifications, including certain minimum requirements or limits on the duration of time a student, school staff member, or library patron can use a hotspot as contemplated in the *NPRM*. *NPRM*, 2023 WL 8602208 at *15, para. 36.

¹⁸⁷ See, e.g., *ECF Order*, 36 FCC Rcd at 8718-19, para. 42 (explaining the decision to refrain from applying minimum service standards in the ECF program and basing it, in part, on the fact that schools and libraries are in the best position to know what is available and sufficient for their remote learning needs).

¹⁸⁸ See 47 CFR § 54.520(c)(4); see also, e.g., NACEPF & Mobile Beacon Comments at 12-13 (urging the Commission to “rely on educators and library administrators to ensure that funded hotspots are used for an educational purpose”), 21 (stating that schools and libraries are best positioned to monitor whether hotspots are being used for an educational purpose and suggesting that the practice of providing copies of AUPs is sufficient); see also EdLiNC Comments at 14 (expressing significant concerns with the notion that the Commission require changes to acceptable or Internet use policies that would require applicants to include certain minimum requirements or limit the duration of time a student, school staff member, or library patron can use a hotspot and noting that such a requirement would “place a significant burden on all applicants to go through a process to review, revise, and approve such policies” and deter many from participating in the program).

¹⁸⁹ See *supra* Section III.G.

¹⁹⁰ See CoSN, *Creating Effective Responsible Use Policies for Schools* (2022), https://cdn.iste.org/www-root/2022-12/Creating_Effective_Responsible_Use_Policies_for_Schools_DEC_2022.pdf (last visited July 15, 2024). See also, e.g., Louisiana Department of Education, *Acceptable Use Policies (AUP)*, https://www.louisianabelieves.com/docs/default-source/district-support/acceptable-use-policies-docx.pdf?sfvrsn=b9796118_2 (last visited July 15, 2024) (providing districts with best practices in connection with a Louisiana requirement for adopting local AUPs).

¹⁹¹ Virginia Department of Education, *Acceptable Use Policy*, <https://www.doe.virginia.gov/programs-services/school-operations-support-services/safety-crisis-management/internet-safety/acceptable-internet-use-policy> (last visited July 15, 2024).

¹⁹² *Id.*

¹⁹³ Maine State Library Comments at 2-3.

the restrictions that they place on their building-based networks, and to adopt suitable AUPs and other policies to limit access, but we seek to ensure applicants have the flexibility for unique situations and to avoid layering additional, similar restrictions that could result in program violations. For example, duration limits could deter applicants seeking to use hotspots for students that are home sick or home for inclement weather and accessing school or homework remotely.

50. Nor do we require applicants to restrict access to the off-premises use of Wi-Fi hotspots and services to only users with appropriate credentials at this time.¹⁹⁴ Based on the record before us, we find that we do not have sufficient information to adopt such requirements; and our experience with the ECF program suggests that many schools and libraries already require appropriate credentials when logging into their networks and using school- or library-issued devices, while those that do not have such restrictions typically have other technical solutions to limit access.¹⁹⁵ To avoid unnecessarily penalizing those applicants with technical limitations and to provide applicants with flexibility, we do not require schools and libraries to implement specific user access restrictions at this time, and we seek additional comment on this issue in the attached *Further Notice of Proposed Rulemaking*. Notwithstanding, consistent with Bureau's expectation around the use of Wi-Fi services on school buses, to the extent schools and libraries already restrict access to their networks and devices, we expect them to continue to implement content and user network restrictions consistent with those restrictions that they place on their building-based broadband networks as described in their acceptable use and other policies.¹⁹⁶ We find that this approach provides reasonable limits to ensure that the off-premises use of Wi-Fi hotspots and services is primarily for educational purposes in accordance with a school's and library's existing AUP and other policies.

51. To ensure students, school staff, and library patrons are aware of the limited purpose for which they might use E-Rate-funded Wi-Fi hotspots and services off-premises, we require schools and libraries to provide notice by adopting and publicly posting their acceptable use policies in whatever form they deem appropriate, but do not require them to collect signed documentation of user compliance with these policies as we required of libraries participating in the ECF program.¹⁹⁷ Given that schools and libraries already typically provide some form of notice of their acceptable use policies to students, school staff members, and library patrons,¹⁹⁸ we find that imposing such a requirement would not be overly

¹⁹⁴ In the case of schools, however, we emphasize that the provision of Wi-Fi hotspots and services for school staff is limited to school staff that provide educational services to students consistent with our definition of "educational purposes." See 47 CFR § 54.500 (defining educational purpose as "activities that are integral, immediate, and proximate to the education of students").

¹⁹⁵ See *ECF Order*, 36 FCC Rcd at 8729, para. 66 & n.189 (explaining that Miami-Dade County Public Schools require user credentials for students, staff, and school-based tutors, as well as for parents, to access the network, as well as credentialing for Wi-Fi users); see also, e.g., OITCs Comments at 3 (explaining that Ohio schools can limit Wi-Fi usage to ensure it will be used primarily for educational purposes through "either: (1) the Wi-Fi hotspot is overlain with filtering that limits usage; or (2) the Wi-Fi hotspot can be accessed solely by a school-supplied laptop that is configured to only allow access for educational purposes."); E-Rate Central Comments at Appendix A (briefly describing an example of how wireless services can be configured to provide access to only certain sites).

¹⁹⁶ See *FY 2024 ESL Order*, 2023 WL 8803733 at *3, para. 9.

¹⁹⁷ *NPRM*, 2023 WL 8602208 at *15, para. 36 (seeking comment on whether the Commission should require schools and libraries to provide copies of their eligible use policies and collect signed documentation of user compliance from patrons, school staff members, or parents/guardians of students); see also *ECF Order*, 36 FCC Rcd at 8737, para. 82; 47 CFR § 54.1710(a)(1)(viii) (requiring libraries to certify on their ECF FCC Form 471 application that they are only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library).

¹⁹⁸ See, e.g., EveryLibrary Institute Comments at 7 (asserting that "libraries already provide their internet use policy to users either by posting it online or physically in the building" and that, by entering the building and using the
(continued....)

burdensome. We likewise agree with those commenters who argue that collecting signed documentation of user compliance with these policies is a significant burden on applicants, many of whom have limited resources and staff to collect and maintain such documentation.¹⁹⁹ Indeed, our experience with libraries who participated in the ECF program has demonstrated just how onerous and complicated collecting and maintaining signed user compliance documentation can be;²⁰⁰ and we are particularly sensitive to the concerns raised by some commenters that such measures might cause libraries to run afoul of their state privacy laws and, as a result, discourage participation.²⁰¹ Accordingly, we do not require applicants to collect this sort of user compliance documentation. However, applicants will be required to certify on their FCC Forms 486 that they have updated and publicly posted their acceptable use policies in accordance with the rules adopted herein.²⁰² Additionally, applicants may be requested to provide their acceptable use policies and provide evidence of where it is publicly posted, upon request by the Commission or the Administrator.²⁰³

52. Finally, while we recognize that schools and libraries may not have the same level of supervision or control over their students', school staff members', or patrons' off-premises use of Wi-Fi hotspots and services as they might have on-premises or even on a school bus as one commenter suggests,²⁰⁴ with these additional safeguards in place, we expect to better ensure their proper use

Internet, library patrons self-certify that they will use the connection consistent with the library's use policy); EdLiNC Comments at 14 (stating that providing copies of AUPs "should obviate the need for any additional requirements around requiring parents and library patrons to sign new parental certifications").

¹⁹⁹ See, e.g., #OaklandUndivided, OUSD Comments at 13-14 (urging the Commission not to require signed documentation regarding the use of hotspot devices and services, noting that it would be a significant burden on schools and that acknowledgement and receipt of a school's AUP during registration is preferable); EdLiNC Comments at 14 (arguing that requiring signed user compliance documentation would create a significant burden on schools and school districts to collect and store these certifications each year); see also Dallas ISD Comments at 4 ("pre-certification of need" and other proposed requirements would only serve to increase operational complexity and reduce program participation); WIDPI Comments at 2 (noting that very few schools and libraries have the time or staff resources to accomplish the unmet needs requirements adopted in the ECF program and highlighting that libraries very rarely maintain this kind of information).

²⁰⁰ See, e.g., ALA Comments at 7-8 (describing how in order to comply with state privacy laws, ECF recordkeeping of Wi-Fi hotspots would need to occur outside of normal library systems, including on paper or on an excel spreadsheet).

²⁰¹ See, e.g., Maine State Library Comments at 2-3 (noting the privacy concerns related to retaining any records containing personally identifiable information regarding library patrons and opposing any measure that would cause libraries to run afoul of state privacy law or give the appearance of doing so, while also finding no merit in requiring libraries to maintain a signed copy of an AUP). While many of the privacy concerns raised by commenters relate specifically to retaining asset inventories and the level of detail required there, we find that these concerns are similarly applicable to requiring signed documentation of user compliance with the acceptable use policies as both require that the library patron name be collected and retained. See *infra* Section III.E.1, para. 69, n.250; see also ALA Comments at 8 (observing that "[w]hen completing acceptable use documents that included personally identifiable information (PII), Chicago Public Library staff frequently received questions about how the information would be used...[and] [p]atrons had reservations that the information could be shared with vendors or the government...or that they could be faulted for exceeding data limit or incorrect use").

²⁰² See Appendix B, adopting 47 CFR § 54.504(g) (as amended).

²⁰³ 47 CFR § 54.516(b) (requiring E-Rate participants to produce documentation upon request by any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state or federal agency with jurisdiction over the entity).

²⁰⁴ See, e.g., EWA Comments at 3 (asserting that "[i]t may not be possible to verify that every single usage is for a legitimate educational purpose, but that this is the case in schools and libraries" and even school buses where "by definition, the only persons with access to Wi-Fi on school buses will be students or those supervising them"). But see OITCs Comments at 3 (observing that in Ohio, schools are able to limit Wi-Fi usage to ensure it is primarily
(continued....)

consistent with our rules and the Communications Act than if we only relied on the existing E-Rate certifications. And, consistent with our existing rules, we remind applicants that our rules require that E-Rate-supported equipment and services be *primarily* used for educational purposes, not *solely* used for this purpose as one commenter submits.²⁰⁵ Thus, our rules provide some, albeit intentionally limited, flexibility to use these Wi-Fi hotspots and services for other purposes when they are not needed for educational purposes in the first instance. Applicants may be required, during a post-commitment review or audit, to explain what steps they have taken to comply with the requirement that use of the Wi-Fi hotspots is primarily for educational purposes (e.g., user restrictions, content restrictions, or duration or time limits).

2. Usage

53. In the *NPRM*, we sought comment on how to prevent the warehousing of Wi-Fi hotspots and reimbursement for unused equipment and/or services.²⁰⁶ Among the various ways contemplated, we asked whether we should adopt numerical criteria to assess usage, require participants to provide evidence of usage, direct service providers to terminate services that are not being used, and/or limit E-Rate support to nine months out of the year (i.e., the length of a typical school year) to prevent the program from covering the costs of unused devices and services during the summer.²⁰⁷ Many commenters agree that the E-Rate program should not pay for unused and/or warehoused equipment or services. At the same time, commenters urge us to create requirements that are both administrable for participants and also take into consideration the practical reasons why equipment or services may go unused for limited periods of time before adopting specific non-usage requirements and reimbursement denial procedures.²⁰⁸ As a general matter, we agree with these commenters and recognize that there are numerous reasons for non-usage and that applicants and service providers are often unable to monitor or mitigate all instances of non-usage.²⁰⁹ We therefore distinguish the treatment for equipment or services that are entirely unused or warehoused from instances where Wi-Fi hotspot equipment and services may have limited periods of non-usage.²¹⁰

54. We first rely on the agency's extensive experience overseeing the ECF program in designing a hotspot program that protects against waste and abuse. Our experience suggests that reasonable safeguards to prevent warehousing and manage non-usage are necessary and possible, and we reject the view expressed by one commenter that there is no need for any usage requirement if the

used for educational purposes by (1) overlaying the hotspot with filtering that limits usage or (2) restricting access to the hotspot to a school-supplied laptop that is configured to only allow access for educational purposes).

²⁰⁵ See NTCA Comments at 6-7 (asserting that “there is no practical way for schools to ensure any and every hotspot...is used *solely* for educational purposes” and noting that it may be even more difficult for libraries to do so) (emphasis added).

²⁰⁶ *NPRM*, 2023 WL 8602208 at *16-17, paras. 39-41.

²⁰⁷ *Id.* at *16-17, paras. 39-40.

²⁰⁸ See, e.g., T-Mobile Comments at 6 (asserting that the “Commission’s policies should be flexible to account for reasonable periods of non-usage and avoid imposing new, onerous burdens on schools and libraries to account for usage” while also considering a range of uses that do not correlate to consistent patterns of usage); CTIA Reply at 8 (“In particular, Commission policies should be flexible to account for reasonable periods of non-usage....”); WIDPI Comments at 3 (agreeing with the Commission that hotspots should be in use as much as reasonably possible, but cautioning that “setting hard standards on use may not reflect the real-world situations our schools and libraries confront”); Verizon *Ex Parte* at 1 (arguing that any usage “rule should be flexible and simple for schools and libraries to apply, and focus primarily on guarding against large-scale warehousing”).

²⁰⁹ For example, valid examples of non-usage might include user error, technical challenges using the device, and user illness. See also *infra* note 225.

²¹⁰ See #OaklandUndivided, OUSD at 14-15 (distinguishing low usage from unused devices or services and noting that “[l]ow usage, however, does not necessarily indicate that participants are warehousing Wi-Fi hotspots or seeking reimbursement for unused devices or services” and suggesting that low usage may “signal an opportunity for additional support or training to close the Homework Gap, rather than an unnecessary expenditure”).

Commission applies existing competitive bidding requirements to off-premises services.²¹¹ In addition, we made several important modifications to this hotspot initiative to distinguish it from the statutorily required procedures in the ECF program. First, the competitive bidding requirements required here were not mandatory in ECF, and we believe requiring them will help ensure applicants consider available options and make cost-effective purchases. Next, the budget mechanism we impose will also require applicants to use limited funding to target those students, school staff, and library patrons with the greatest need. We also place funding caps for hotspot devices and recurring service, which will have the effect of limiting the E-Rate funding available for Wi-Fi hotspots and service. Finally, we also believe requiring schools and libraries to pay the non-discount share of costs will help incentivize applicants to make measured choices and determine community needs. These important distinctions from the ECF program will be integral to helping us protect limited funds. We disagree with the commenter and find it is necessary to adopt additional requirements to ensure that we are maximizing the use of E-Rate supported Wi-Fi hotspots and services.²¹²

55. *Requirements.* Considering our long-standing obligation to protect the integrity of the E-Rate program and being mindful of the concerns expressed by commenters regarding the feasibility of tracking and identifying non-usage, we adopt a combination of requirements to protect against non-usage. We first require applicants to activate the Wi-Fi hotspot and service, make it available for loan, and publicize the availability of the Wi-Fi hotspot device and service to students, teachers, and library patrons via public notice or other means. To further protect the program from potential waste, we also require applicants to certify to having taken these steps on their FCC Forms 486.²¹³ Applicants already use the FCC Form 486 to notify USAC that services have started on a particular funding request and will be required to certify to adopting measures to ensure proper use of E-Rate-funded Wi-Fi hotspots and services,²¹⁴ among other things, and are required to submit these forms 120 days after the service start date or the date of the funding commitment decision letter, whichever is later.²¹⁵ We find that requiring applicants to also certify to having taken these steps on their FCC Forms 486 before they or their service providers can begin to submit their requests for reimbursement is reasonable and would not be overly burdensome.²¹⁶ To be clear, we expect schools and libraries to make every effort to make available and encourage the use of Wi-Fi hotspots and services supported by the E-Rate program.

56. Second, we expect that schools and libraries will carefully consider how to structure their lending programs to promote ongoing use of Wi-Fi hotspots and services. ALA highlights the importance of flexibility in circulation policies to address local needs but notes a general standard is necessary to “ensur[e] the data is used regularly by users.”²¹⁷ We agree that schools and libraries understand well their community needs and are in the best position to structure a lending program to meet those needs, and can

²¹¹ See SHLB & OTI Comments at 26.

²¹² But see Verizon *Ex Parte* at 1 (explaining that usage rules are only necessary “when the support amount covers the entire cost of a service”).

²¹³ See, e.g., 47 CFR § 54.1711(a)(1)(viii), (a)(2)(vi) (requiring applicants and service providers to certify that they are not willfully or knowingly requesting reimbursement for equipment or services that are not being used).

²¹⁴ See Appendix B, adopting 47 CFR § 54.504(g) (as amended).

²¹⁵ See Universal Service Administrative Company, *FCC Form 486 Filing*, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited July 15, 2024).

²¹⁶ We further note that applicants must file the FCC Form 486 and service providers must file the Service Provider Annual Certification (FCC Form 473) prior to filing requests for reimbursement (FCC Forms 472/474) with USAC for payment. USAC, *Step 6: Invoicing- Invoicing Prerequisites*, <https://www.usac.org/e-rate/applicant-process/invoicing/> (last visited July 15, 2024). Applicants and service providers should not be invoicing for Wi-Fi hotspots and mobile wireless Internet service prior to the hotspot devices being made available for loan to students, school staff, and library patrons.

²¹⁷ ALA Comments at 13; see also WIDPI at 3 (cautioning against “hard standards on use [that] may not reflect the real-world situations our schools and libraries confront”).

do so in a way that maximizes use of Wi-Fi hotspots and services following the requirements we adopt today. Such measures to encourage use may include limited lending periods (e.g., 21 days or less), providing technical assistance to students and library patrons, monitoring circulation statistics, or other approaches deemed suitable by the school or library for the local community. For example, EveryLibrary Institute explains that libraries often already have mechanisms in place to pause service to a specific device which is “typically enough reason for the patron to return the device.”²¹⁸ This prevents the service provider from billing “for the time elapsed when the device was not in service, reducing program costs automatically.”²¹⁹ Similarly, ALA reported that “the Dublin Public Library in Texas and Pima County Library in Arizona [are] able to work with service providers to track data usage and other aspects of hotspot use.”²²⁰

57. Finally, to further prevent the E-Rate program from paying for ongoing services that are not being used, lines of service that have no data usage for approximately three consecutive months must be terminated by the service provider. As discussed further below, on a monthly basis, service providers are required to notify applicants of each line of hotspot service that goes unused for at minimum 60 consecutive days and to provide applicants 30 days for the hotspot to be used before terminating the line of service. Service providers are also required to provide schools and libraries with data usage reports as described below, and schools and libraries should regularly review these reports to identify hotspots with periods of non-usage to determine if there is an issue with the device or to seek the return of a Wi-Fi hotspot after some period of non-use so the device can be loaned out again.

58. *Warehousing.* In the ECF program, we prohibited schools and libraries from requesting E-Rate support for the purchase of additional Wi-Fi hotspots beyond the per-user limitation to “maximize the use of limited funds” and only provided support for devices and services currently needed, thus avoiding unnecessary warehousing.²²¹ Several commenters, including the EveryLibrary Institute, flagged “the possibility of applicants overstocking equipment to prepare for breakage or loss” and that the E-Rate program should not pay for such equipment and services.²²² We agree and adopt the same per-user limitation and prohibition against warehousing. Considering the limited funding available, we find that permitting applicants to purchase hotspots in anticipation of future use, loss, or breakage would be wasteful, and we conclude that limiting support in this way is reasonable. Applicants must certify to their compliance with this limitation on the FCC Form 471 application.²²³ Wi-Fi hotspots that have not been made available for distribution per the requirements specified above will be considered to have been warehoused, a violation of our rules, and subject to a financial recovery.

59. *Limited periods of non-use.* As well-documented in the record, there may be legitimate reasons for limited periods of non-use by students, school staff, and library patrons that are outside of the control of schools, libraries, and service providers.²²⁴ Even in the context of the ECF program, we have

²¹⁸ EveryLibrary Institute at 9.

²¹⁹ *Id.*

²²⁰ ALA *Ex Parte* at 2; *see also* E-Rate Central Comments at 4 (“Hotspot loan terms . . . should be left to the discretion of the school or library. Whatever the term, schools and libraries should be encouraged to seek the early return of devices not meeting targeted use goals.”).

²²¹ *ECF Order*, 36 FCC Rcd at 8726, paras. 58-59.

²²² EveryLibrary Institute Comments at 8; *see also, e.g.*, EdLiNC Comments at 14 (stating that warehousing likely “only occur[s] occasionally” but “that every effort should be made to prevent” it).

²²³ *See* Appendix B, adopting 47 CFR § 54.504(a)(1)(xii) (as amended).

²²⁴ *See, e.g.*, NACEPF & Mobile Beacon Reply 8-9 (providing reasons why a device could show low usage or fluctuate in usage throughout the year, including a student not knowing how to use the hotspot or the hotspot being served by an insufficient internet connection, and urging the Commission to adopt a flexible approach as a result); ALA Comments at 13 (noting that there are many circumstances outside of an individual’s control for why a hotspot might not be used in a month, including, for example, a defective battery, illness, or damage to an individual’s

(continued....)

recognized that there may be circumstances where non-usage occurs but services would still be eligible for support, such as during a school's summer break.²²⁵ At the same time, we are mindful of the need to balance the legitimate reasons for limited periods of non-use with our need to protect program integrity, and as such have adopted the approach described below, with a notice opportunity before services will be terminated.

60. Commenters expressed concern with requirements that would leave schools and libraries responsible for paying the full amount of service charges when there is limited usage²²⁶ and indicated that such an approach would discourage participation in the program.²²⁷ However, service providers have also asserted that they have no control over the hotspots provided by a school or library to students, staff members, or library patrons.²²⁸ In response to the approaches proposed in the *NPRM*, commenters explained that assessing usage against numerical criteria would be challenging because usage below a pre-determined weekly, monthly, or quarterly threshold does not necessarily indicate that the hotspot devices are being warehoused and should be prohibited from reimbursement.²²⁹ Commenters also described the importance of student access to hotspots in the summer months to complete summer reading projects and other educational activities, and that the year-round access provided by libraries is essential.²³⁰ We agree with commenters that overly complex usage requirements would likely deter schools and libraries from seeking support for Wi-Fi hotspots and services, and find that such an outcome would negate our efforts to ensure schools and libraries can operate lending programs to connect students, school staff, and library patrons for off-premises use. Similarly, given the vital importance of Internet connectivity, we find that limiting E-Rate support to nine months would contravene the purpose of this funding and “would further exacerbate the ‘summer slump’ – the decrease in learning between school

personal device); *see also* SECA Comments at 10 (providing a non-exhaustive list of reasons why a hotspot may not be in use even during the school year, including changes in demand); Verizon Ex Parte at 1 (stating that “periods of non-use are consistent with the normal pattern of school activity, as the Commission recognized in the school bus Wi-Fi proceeding”).

²²⁵ *See* ECF Program FAQ 9.12, available at <https://www.fcc.gov/emergency-connectivity-fund-faqs> (last visited July 15, 2024) (noting that the Commission declined to adopt specific non-usage rules for the ECF program, but instead requires applicants and service providers to certify on the request for reimbursement that they are not willfully or knowingly requesting reimbursement for services and equipment that are not being used and to take reasonable actions to monitor and track usage, while acknowledging that there may be circumstances where non-usage occurs but services would still be eligible for support (e.g., summer break)); *see* 47 CFR § 54.1711(a)(1)(viii), (a)(2)(vi).

²²⁶ *See, e.g.*, SECA Comments at 9-10 (urging the Commission not to mandate monthly usage, but instead to rely on activation and availability due to the nature of hotspot service contracts and the unpredictability of student usage); ALA Comments at 13 (explaining that removing the cost of unused services and devices from invoices would “place considerable burden on the provider and the library”).

²²⁷ #OaklandUndivided, OUSD Comments at 16-17; SHLB and OTI Comments at 27 (arguing that “[o]verly burdensome requirements will discourage participation in the program”).

²²⁸ *See, e.g.*, T-Mobile Comments at 6 (asking the Commission to be flexible and reasonable in setting usage policies, and noting that service providers cannot control or enforce use, or determine the cause for the non-usage); CTIA Reply at 8 (noting that demand varies, especially during school breaks and holidays).

²²⁹ #OaklandUndivided, OUSD at 14-15; NACEPF & Mobile Beacon Comments at 22 (arguing that a numerical threshold would need to “be sufficiently flexible to account for period of lower use or disuse”).

²³⁰ *See, e.g.*, NACEPF & Mobile Beacon Comments at 22 (“[A] hotspot might . . . be used more frequently near the end of summer when students are completing back-to-school activities such as summer reading projects.”); ALA Comments at 13 (explaining that “libraries provide vital educational opportunities of all kinds year-round, and perhaps especially so during summer enrichment and supplemental programs”); #OaklandUndivided, OUSD at 16 (observing that “the [I]nternet is essential for tackling summer learning assignments, fulfilling curricular prerequisites, recovering academic credits, participating in adaptive online learning programs . . . and other educational purposes”).

years – and inhibit remote learning during summer school.”²³¹

61. However, to reduce the risk of waste and inefficiencies in supporting Wi-Fi hotspots and services in the E-Rate program, we find that imposing a reasonable non-usage threshold requirement is both appropriate and necessary to ensure that E-Rate support is going to services that are actually being used. We therefore adopt a rule to prohibit E-Rate support for lines of service that have not been used for a period of three consecutive months and have gone through the required notice process.²³² Pursuant to this new rule, at least once every 31 days,²³³ service providers are directed to identify lines of service that have gone unused for no less than 60 days and provide the school or library with 30 days’ notice that failure for the hotspot service to be used within the 30-day notice period will result in service termination for that particular line.²³⁴ We conclude that this approach appropriately accounts for limited legitimate instances of non-usage, such as a school’s summer break,²³⁵ while also providing sufficient time to allow schools and libraries to work with their service provider, as well as their student, school staff, and library patron users to cure the non-usage without being unnecessarily penalized. Upon receipt of a non-usage notification from a service provider, applicants should take steps to determine whether the device and services are being used, should be redistributed, or should be discontinued. Applicants may work with their service provider to restart services that have been terminated (e.g., where a hotspot is redistributed) one time per funding year, but we caution applicants that such action to restart service after termination will be subject to program integrity reviews and therefore, applicants should take steps to ensure that they have the associated need prior to restarting services terminated for non-usage again.

62. We are also sympathetic to the concerns expressed in the comments regarding a rule that would leave schools and libraries responsible for paying the full amount of service charges for limited usage or in this case, a terminated line of service.²³⁶ In the event of a terminated line of service resulting

²³¹ CTIA Reply at 8.

²³² See Appendix B, adopting 47 CFR § 54.502(e)(5). To reduce the chances of fraudulent activity, the following does not constitute usage for these purposes: one-way data sent from the service provider to the Wi-Fi hotspot, one-way SMS messages sent from the service provider to the hotspot, and SMS messages sent or received by an E-Rate-funded hotspot.

²³³ To minimize the burden associated with checking for non-usage, service providers will not be required to check for non-usage on a daily basis. Rather, we find that checking one time per month for any lines of service with zero data usage for 60 or more days in the preceding 30 days will be more administratively feasible for both service providers and the schools and libraries receiving notice of such non-usage.

²³⁴ Upon determining a line of service has not been used for 60 days, service providers will have five business days to issue a notice to the applicant of such non-usage. Applicants will have 30 days from the date of the service provider’s notification to begin using the services or the line of service will be terminated.

²³⁵ We decline to adopt a grace period for certain months that might be associated with non-usage, noting that applicants can restart service. We also encourage applicants to work with their service providers to pause service if there is a known period of time when the Wi-Fi hotspots will not be used (e.g., the devices are collected and will not be redistributed until the school year begins). See SHLB July 11, 2024 *Ex Parte* Letter at 9-10.

²³⁶ See, e.g., Dallas ISD Comments at 5 (proposing that the Commission strike certain proposed rules, including 54.504(f)(6), which would require the service provider to provide notice of non-usage after 30 days and not willfully or knowingly seek reimbursement for equipment or services that are not used); SECA Comments at 9-10 (“The Commission should **not** mandate that the monthly usage of service is a prerequisite for reimbursement of service charges.... Schools should not be penalized by having to pay for the full monthly cost whenever the projected needs did not match actual needs. Yet this 100% accuracy requirement is the *de facto* standard inherent in a policy that prohibits the reimbursement for service in those months where there is no usage”) (emphasis in original); #OaklandUndivided, OUSD Comments at 16 (“Any provision that automatically denies reimbursement to school districts with usage issues will discourage districts from participating in the program due to budgetary constraints.”); see also T-Mobile Comments 6-7 (asserting that “the Commission should avoid proposals to hold service providers accountable for non-usage over which they have no control”); CTIA Reply at 7 (asserting that “[c]ommenters broadly agree that burdensome new usage requirements should not be imposed as the service transitions to E-Rate”); (continued....)

from this non-usage requirement, service providers are prohibited from billing the applicant for the balance that was not paid for by the E-Rate program.²³⁷ Service providers will be required to certify on their FCC Form 473 (Service Provider Annual Certification (SPAC) Form) that they will comply with this non-usage notice and termination requirement and will not charge applicants the balance for the terminated services.

63. Finally, while we understand service providers' concerns regarding their lack of a direct customer relationship with a student, school staff, and library patron user, we find that imposing this usage requirement will appropriately incentivize service providers to avoid requesting reimbursement for ongoing lines of services that are not being used. This requirement follows a similar principle to the non-usage rules adopted in other programs, like ACP and Lifeline, and therefore we expect that many mobile wireless service providers are familiar with monitoring usage and have even adapted their systems to track and provide notice accordingly.²³⁸ We conclude that this rule strikes a reasonable and appropriate balance between ensuring that E-Rate support for Wi-Fi hotspots is being used responsibly, while not implementing overly complex rules that would be unadministrable for schools and libraries or deter participation.

64. Some commenters alternatively suggest that we provide program participants with an opportunity to explain the reason for the non-usage before denying funding and argue that this approach is preferable.²³⁹ We decline to take this approach because we find that such a process would be overly resource intensive and fail to efficiently achieve the program's goals. In particular, we find that tracking down students, school staff members, and library patrons to ascertain the reason for non-usage while disbursements are on hold could take time and significantly delay the review and disbursement process. In addition, such an approach would require the Commission to prescribe a comprehensive list of the permissible reasons for which Wi-Fi hotspots and services may not be used after they have been distributed, which the Commission would then need to be able to verify for purposes of ensuring program compliance. Considering the record before us, we are reluctant to create and implement such a list because that approach would only delay reimbursements, frustrate program participants, and cause uncertainty about the availability of funding. Comparatively, we find the non-usage notice and termination rule detailed above will better allow schools and libraries to work with their students, school staff, and library patrons, as well as their service providers to ensure the hotspots and services are being used without impacting or delaying the review and disbursement processes.

65. Moreover, in the context of the new program safeguards that we adopt in this Order, the additional usage requirements we establish today protect public funds and maximize the use of supported Wi-Fi hotspots and services. In particular, we believe the funding cap for monthly service described above will aid in controlling costs and the requirement of paying the non-discount share of costs will incentivize schools and libraries to avoid subscribing to unused services,²⁴⁰ enabling us to provide support for Wi-Fi connectivity necessary to engage in remote learning for students, school staff, and library patrons. However, in light of the challenges identified with the solutions proposed in the *NPRM* and lack

ALA Comments at 13 (stating that they are "adamantly opposed to a service provider removing the cost for the service or device from the invoice provided to the library" if a service or device is not in use in a given month as there are several reasons outside of an individual's control why a hotspot might not be used in a month").

²³⁷ See Appendix B, adopting 47 CFR § 54.502(e)(6).

²³⁸ See, e.g., 47 CFR § 54.1809(d) (requiring participating service providers to de-enroll customers from the ACP benefit if the services have not been used for 30 days and after 15 days' notice); 47 CFR § 54.405(e)(3) (requiring participating service providers to de-enroll customers from the Lifeline benefit if the services have not been used for 30 days and after 15 days' notice).

²³⁹ See, e.g., WIDPI Comments at 3; EveryLibrary Institute Comments at 8-9 (proposing that applicants be given an opportunity to explain the lack of use before denying reimbursement and providing examples of valid non-usage, including weather disasters and security emergencies).

²⁴⁰ Verizon Ex Parte at 1.

of information in the record to address these issues, we remain cognizant of the risk of non-usage of E-Rate-funded hotspots and want to ensure applicants are encouraging use among their students, school staff, and library patrons. We therefore find it necessary to explore further ways to monitor and address non-usage in the attached *Further Notice of Proposed Rulemaking*. Additionally, we delegate authority to the Bureau to resolve any procedural or administrative issues that arise with the usage requirements adopted herein.

66. *Usage reports.* To enable schools and libraries to monitor usage and make adjustments to the structure of their lending programs in a way that maximizes the use of Wi-Fi hotspots and services, we require service providers to provide reports regarding data usage to applicants at least once per billing period.²⁴¹ Such reports must be provided in machine-readable digital format, so that the information lines can be read and sorted, clearly identifying the lines that are not being used across billing periods²⁴² or that will be or have been terminated as a result of the non-usage rules adopted herein. Because service providers regularly make such reports available to applicants and we provide flexibility in how reports are provided, we find that imposing such a requirement would not be overly burdensome.²⁴³ Further, no commenter opposes this idea.²⁴⁴ Schools and libraries are also required to make these reports available to the Commission and/or USAC upon request, including to support program integrity reviews. We expect applicants to review the data usage reports and to take actions to address non-usage included in the reports, including requesting the return of the Wi-Fi hotspot or requesting the service to be turned off to prompt the return of the unused hotspot device, consistent with the requirements described herein.

67. *Program integrity reviews.* In addition to the existing standard post-commitment reviews and audits to ensure compliance with E-Rate program rules more broadly, we direct USAC to regularly conduct program integrity reviews to monitor school, library, and service provider compliance with the requirements defined above, including checking for warehousing and discontinued lines of services for non-usage. We further direct USAC, subject to approval by the Bureau, to develop risk-based procedures for these reviews. Schools and libraries subject to these program integrity reviews must provide usage reports and other documentation as requested, consistent with E-Rate program rules.

3. Recordkeeping

68. We modify section 54.516 of the Commission's rules to require E-Rate participants who receive support for the off-premises use of Wi-Fi hotspots and services to maintain detailed asset and service inventories of each hotspot and wireless service provided for use off-premises.²⁴⁵ In the *NPRM*, we sought comment on whether to adopt the ECF program's requirement to keep detailed asset and service inventories for each hotspot device and service provided to a student, school staff member, or library patron.²⁴⁶ In response, commenters raised concerns about the burdens associated with maintaining

²⁴¹ *NPRM*, 2023 WL 8602208 at *16-17, paras. 39-40; *see also* Verizon *Ex Parte* (noting that "Verizon gives its ECF customers access to an online portal that allows them to monitor usage on every activated hotspot line").

²⁴² Service providers must make reports available on a monthly basis even if a billing period includes multiple months. We seek further comment on how to ensure data usage reports are delivered in a manner that clearly demonstrates usage below. *See infra* Section V, para. 105.

²⁴³ *See, e.g.*, T-Mobile Comments 6-7 (suggesting that service providers can relay usage information to schools and libraries at appropriate levels, although schools would still need to review and analyze such information to make individualized determinations about each connection); *see also* Letter from Ben Weintraub, CEO, Kajeet, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 1-2 (filed Mar. 14, 2024); Verizon *Ex Parte* at 2 (stating that is "reasonable for the Commission to require service providers to provide monthly usage data to school and library customers upon request").

²⁴⁴ *See, e.g.*, NACEPF & Mobile Beacon Comments at 22 (agreeing with the Commission's proposal that service providers provide usage data to the school or library); T-Mobile Comments at 6-7; Verizon *Ex Parte* at 2.

²⁴⁵ *NPRM*, 2023 WL 8602208 at *18-19, paras. 43-44.

²⁴⁶ *See id.*; *see also* 47 CFR § 54.1715(a) (requiring equipment and service inventories of ECF-funded equipment).

such inventories.²⁴⁷ Our experience with the ECF program, however, demonstrated the inventory requirements served a critical purpose in ensuring that schools and libraries receiving support know where the equipment and services are located and that they comply with the program requirements. In particular, the inventories were helpful in detecting, for example, warehousing of devices by identifying which devices had not been distributed. As such, we conclude that the benefit to the program of adopting more detailed inventory requirements will outweigh the burden of requiring increased recordkeeping. We are further convinced that this is a reasonable requirement by the fact that the E-Rate program is not an emergency program like the ECF program. We therefore conclude that there is time for schools and libraries to make a reasonable assessment of their needs and ability to comply with these recordkeeping requirements, and urge applicants to do so prior to requesting support. Relatedly, we remind participants that they may be asked to provide this information upon request to the Commission or USAC,²⁴⁸ and that failure to comply with program rules, including the requirement to maintain asset and service inventories, may result in a denial of funding or a financial recovery.

69. In adopting the more detailed inventory requirements, we are sympathetic to the concerns expressed by library commenters, who claim that the level of detail required by the ECF program's inventory requirements served as a barrier to participation in the program because of conflicts with many states' library patron privacy laws and existing library circulation systems and practices.²⁴⁹ In particular, commenters explain that the majority of states have laws in place that protect the confidentiality of library records and prohibit disclosure of patrons' personally identifiable information (e.g., individual names) without first seeking a waiver from each individual or, in some cases, needing a court order.²⁵⁰ Circulation and tracking systems are set up to be compliant with these state laws, meaning that libraries did not already track and retain records with sufficient detail to meet the ECF program's requirements, resulting in the need for manual tracking of this information, and to do so potentially in conflict with applicable state laws. While we recognize that schools also have their own privacy laws to which they adhere, the limitations are not so strict as to create comparable burdens for recordkeeping. We therefore agree with commenters who advocate for adopting library-specific rules to recognize the realities of libraries' abilities to maintain such records²⁵¹ and to ensure that libraries can take part in this important funding source to continue their successful hotspot lending programs.²⁵²

70. We also agree with commenters who urge the Commission to be clear up front about what is expected of the recordkeeping requirements.²⁵³ We find that modifying section 54.516 of the Commission's rules to adopt the specific information required for an asset and service inventory of Wi-Fi hotspots and services purchased with E-Rate support is the best approach to ensure parties understand

²⁴⁷ See, e.g., ACSA-CSBA Comments at 4; Dallas ISD Comments at 5.

²⁴⁸ See 47 CFR § 54.516(b) (requiring E-Rate program participants to produce records relating to program participation at the request of the Commission, USAC, any representative appointed by a state education department, or any local, state or federal agency with jurisdiction over the entity); see also Appendix B, adopting 47 CFR § 54.516 (as amended).

²⁴⁹ See, e.g., EveryLibrary Institute Comments at 10 ("In most cases, libraries maintain the number of circulations a given item receives and sometimes the dates of circulation, but the library cardholder is not stored in that record" and noting that smaller, less-funded libraries are likely to be disadvantaged by such "unreasonably burdensome" requirements); SHLB & OTI Comments at 27, 28; ALA Comments at 7-8 (explaining how the requirements conflict with state laws protecting the confidentiality of library records and how such laws effectively force libraries into manual recordkeeping because the systems are set up to comply with the privacy requirements, resulting in greater burden to the libraries); Maine State Library Comments at 2.

²⁵⁰ See, e.g., ALA Comments at 7.

²⁵¹ See, e.g., ALA Comments at 7; WIDPI Comments at 3.

²⁵² See *NPRM*, 2023 WL 8602208 at *18, para. 43 (seeking comment on adopting library-specific inventory rules for hotspot lending programs).

²⁵³ See, e.g., SHLB & OTI Comments at 27.

exactly what is expected. We also remind applicants that the obligation of schools and libraries to keep track of and document the devices that they distribute includes documenting information about missing, lost, or damaged equipment.

71. For school participants receiving support for Wi-Fi hotspots and services, the asset and service inventory must identify: (1) the equipment make/model; (2) the equipment serial number; (3) the full name of the person to whom the equipment was provided; (4) the dates the equipment was loaned out and returned, or the date the school was notified that the equipment was missing, lost, or damaged; and (5) service detail. By “service detail,” we mean the line number or other unique identifier that associates a device to that particular line of service. For library participants receiving support for Wi-Fi hotspots and services, the asset and service inventory must identify: (1) the equipment make/model; (2) the equipment serial number; (3) the dates the equipment was loaned out and returned, or the date the library was notified that the equipment was missing, lost, or damaged; and (4) service detail.

72. Consistent with the E-Rate program’s current recordkeeping rule, program participants are required to retain documentation related to their participation in the E-Rate program, including the asset and service inventories,²⁵⁴ acceptable use policies,²⁵⁵ evidence of publicizing Wi-Fi hotspot availability,²⁵⁶ and other required documentation²⁵⁷ 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.²⁵⁸ Separately, we amend the language of section 54.516 of the Commission’s rules to include E-Rate-funded equipment and services provided on school buses.²⁵⁹

73. As was the case for the ECF program, we are mindful of privacy concerns regarding the collection of personally identifiable information about the individual (e.g., student, school staff member, or library patron) that makes use of E-Rate-supported equipment and services. The Commission, USAC, and any contractors or vendors will abide by all applicable federal and state privacy laws. We also direct Commission, USAC, and contractor/vendor staff to take into account the importance of protecting the privacy of students, school staff and library patrons; to design requests for information, including those related to the data usage reports and asset and service inventories, from schools and libraries in a way that minimizes the need to produce information that might reveal personally identifiable information; and to work with auditors to accept anonymized or deidentified information in response to requests for information wherever possible.²⁶⁰ In addition to the existing standard post-commitment reviews and audits to ensure compliance with E-Rate program rules more broadly, we direct USAC to regularly conduct program integrity reviews to monitor school, library, and service provider compliance with the asset and service inventory rules.

4. Duplicate Funding

74. In the *NPRM*, we sought comment on safeguards to prevent duplicative funding for off-premises use of Wi-Fi hotspots and services across the federal universal service programs and other

²⁵⁴ *Supra* para. 71.

²⁵⁵ *Supra* paras. 31, 48.

²⁵⁶ *Supra* para. 55.

²⁵⁷ *Supra* para. 32 (requiring Schools, school districts, and consortia including schools or school districts that receive support for the off-premises use of Wi-Fi hotspots and/or services and use such hotspots as part of a one to one (1:1) initiative to document clearly, using individual survey results, attestations, or equivalent, that each individual student needed a Wi-Fi hotspot).

²⁵⁸ *See* 47 CFR § 54.516(a).

²⁵⁹ *See* Appendix B adopting 47 CFR § 54.516(e) (as amended). *See also FY 2024 Eligible Services List*, 2023 WL 8803733 at *4, para. 11 (reminding applicants that an accurate asset inventory will be required for E-Rate-funded equipment on buses).

²⁶⁰ *See* Appendix B adopting 47 CFR § 54.516(b) (as amended).

funding programs, including federal, state, Tribal, or local programs.²⁶¹ We also requested comment on whether “a certification by the school or library [would] be sufficient to indicate that E-Rate support is only being sought for eligible students, school staff, or library patrons and the school or library does not already have access to Wi-Fi hotspots purchased with ECF support or other sources of funding.”²⁶² Generally, commenters agree that the Commission should not duplicate funding for Wi-Fi hotspots and services that are funded through other sources or programs.²⁶³ We conclude that it is appropriate to prohibit duplicative funding for off-premises Wi-Fi hotspots and services funded with E-Rate support and further find that protections against duplicate funding adopted herein should apply to all E-Rate-funded equipment and services.

75. For example, NTCA argues that Wi-Fi hotspots and services should be limited to locations where High-Cost USF support is not distributed and where the Commission’s own broadband availability data indicate service is not already available.²⁶⁴ In contrast, other commenters contend that “the Commission should not impose unnecessary restrictions on households’ receipt of funding from multiple federal universal service programs . . . households are entitled to apply under different USF programs for different eligible needs.”²⁶⁵ We agree that we should not duplicate funding for Wi-Fi hotspots and services that are already funded. However, we disagree that the availability of High-Cost support or the availability of service as indicated in the Commission’s broadband data should preclude funding for an E-Rate-supported Wi-Fi hotspot because this does not guarantee that a student or library patron has the off-premises broadband access needed to complete their educational activities.

76. As noted in the *NPRM*, households may justifiably receive support from multiple universal service programs at the same time;²⁶⁶ however, to make the most of the support available through the E-Rate program, and to protect against waste, fraud, and abuse, we find it necessary to not extend E-Rate support to Wi-Fi hotspots and services that have already been funded through other sources or programs. Therefore, we will not provide E-Rate support for eligible Wi-Fi hotspots and services, or the portion of eligible Wi-Fi hotspots and services that have already been reimbursed with other federal, state, Tribal, or local funding, or other external sources of funding. Additionally, while commenters suggested that we should not provide funding to households that receive ACP benefits,²⁶⁷ we note that the ACP officially ended on June 1, 2024.²⁶⁸ As such, we find that not only does this eliminate the concern of duplicative funding between ACP and the Wi-Fi hotspots and services funded through the E-Rate program, but it also reinforces the need for E-Rate support to connect students, school staff, and library

²⁶¹ *NPRM*, 2023 WL 8602208 at *18, para. 42.

²⁶² *Id.*

²⁶³ See, e.g., EdLiNC Comments at 15 (“[S]chools and libraries should be careful not to double dip amongst different federal programs to support connectivity.”); NTCA Comments at 2-4; SECA Comments at 5-6.

²⁶⁴ See NTCA Comments at 4-5; see also WISPA Reply at 5 (supporting NTCA’s statement); Letter from Michael Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 1 (filed July 9, 2024) (NTCA *Ex Parte*).

²⁶⁵ See NACEPF & Mobile Beacon Comments at 13; see also ALA Comments at 14 (stating that “some families may have home internet, using a program such as ACP or otherwise, but it is not sufficient to meet the educational needs of the entire family. In these cases, a family member may also need to check out a Wi-Fi hotspot from the library.”).

²⁶⁶ *NPRM*, 2023 WL 8602208 at *18, para. 42.

²⁶⁷ See SECA Comments at 5-6 (stating that “students whose families receive support for Internet at home through [the Affordable Connectivity Program (ACP)] or other similar state or federal initiative should not be eligible for being loaned an E-[R]ate funded hotspot unless there are extenuating circumstances where the internet service at home is not available to the student”).

²⁶⁸ See Press Release, FCC, FCC Brings Affordable Connectivity Program to a Close (May 31, 2024), <https://docs.fcc.gov/public/attachments/DOC-402930A1.pdf>.

patrons who may now lack access as a result of losing the ACP benefit.

77. To prevent duplicative funding, we take a similar approach to the approach we took in the ECF program²⁶⁹ and adopt a rule prohibiting E-Rate participants from seeking support or reimbursement for eligible equipment and services that have been funded by other programs, including federal (e.g. other universal service programs, ECF, etc.), state, Tribal, or local programs. Recognizing that the need to protect against duplicative funding is not limited to E-Rate-funded Wi-Fi hotspots and services used off-premises, we adopt rules to prohibit duplicative funding for all E-Rate-funded equipment and services. We also find this to be consistent with the Commission's past actions to prevent duplicate funding in other universal service support mechanisms.²⁷⁰ Additionally, consistent with record support for requiring applicants to certify that there is no duplicative funding for their requests,²⁷¹ we require applicants to certify on the application for funding and on the request for reimbursement forms (i.e., the FCC Forms 472/474) that they are not seeking support for eligible equipment and services that have been funded by other sources. This measure balances the interest of applicants by allowing them to continue participating and receiving funding from other programs, for which they are eligible, while simultaneously preventing waste of limited E-Rate funds by not funding equipment and services that have already been funded by other programs. These rules will help ensure that applicants are aware of the prohibition on duplicative funding for equipment and services, and are only requesting funding that they do not otherwise have available.

5. Equipment Disposal

78. Section 254(h)(3) of the Communications Act, which applies to the E-Rate program, and the existing E-Rate rules prohibit sale, resale, or transfer of E-Rate-supported equipment for five years.²⁷² In the *ECF Order*, we adopted a three-year wait time to dispose, sell, trade, or donate equipment purchased with ECF funds, including Wi-Fi hotspots, explaining that “devices and other equipment loaned to students, school staff, and library patrons and installed off-campus will likely have a shorter average life cycle than equipment installed and maintained on school or library premises.”²⁷³ Consistent with our approach in the ECF program, we find that Wi-Fi hotspot devices intended for off-premises use by students, school staff, and library patrons are likely to have a shorter lifecycle and therefore, we adopt a rule that Wi-Fi hotspot devices for off-premises use and supported with E-Rate funds can be disposed of after three years.

79. Schools and libraries requesting E-Rate support for Wi-Fi hotspots are prohibited from selling, reselling, or transferring equipment in consideration of money or any other thing of value for three years after its purchase.²⁷⁴ Wi-Fi hotspots purchased with E-Rate funds and used off-premises will

²⁶⁹ 47 CFR §§ 54.1710 (requiring applicants to certify on the ECF FCC Form 471 that they are not requesting equipment or services that have already been funded), 54.1712 (prohibiting ECF support for equipment or services reimbursed with other sources of funding); *ECF Order*, 36 FCC Rcd at 8754-55, paras. 125-28.

²⁷⁰ The Commission previously adopted a rule prohibiting healthcare providers from seeking duplicate support from the Telecommunications Program or the Healthcare Connect Fund for the same expenses funded by another universal service program. See 47 CFR § 54.628; *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC 16678, 16812, paras. 334-38 (explaining that the rule prohibits eligible healthcare providers from “double-dip[ping]” from universal service funding for the same connections funded through the Rural Health Care programs).

²⁷¹ See, e.g., EdLiNC Comments at 15 (“Additionally, to further ensure compliance with this reasonable standard, we recommend that the Commission develop an additional certification that will require schools and libraries to ensure that double-dipping among federal home broadband programs does not occur.”).

²⁷² See 47 U.S.C. § 254(h)(3); see also 47 CFR §§ 54.513(a)-(b), 54.1713(a)-(b).

²⁷³ *ECF Order*, 36 FCC Rcd at 8755-56, paras. 128-35.

²⁷⁴ This restriction is consistent with 47 U.S.C. § 254(h)(3) (“Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or

(continued....)

be considered obsolete at the end of the three year period.²⁷⁵ Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded. This approach takes into consideration the limited lifespan of Wi-Fi hotspots, while also helping prevent potential waste, fraud, and abuse by ensuring that the hotspot devices are used for a minimum of three years.

6. Certain Populations

80. *Head Start, Pre-Kindergarten, and Kindergarten.* In the *NPRM*, we proposed to limit the student population eligible for E-Rate support for the off-premises use of Wi-Fi hotspots and service.²⁷⁶ Specifically, we proposed to exclude Head Start programs, providing early learning and development for pre-school children from the ages of 3 to 5,²⁷⁷ and pre-kindergarten students from receiving E-Rate support for off-premises use of Wi-Fi hotspots and services. Commenters agree with excluding the eligibility of Head Start and pre-kindergarten populations for a Wi-Fi hotspot to be used off-premises, but also urged that kindergarten populations should be excluded as well.²⁷⁸ SECA supports making young learners, pre-kindergarten, and kindergarten ineligible for Wi-Fi hotspots when they are off-campus stating that not giving them this device can “help curb lost and damaged devices” and further stating that “hotspots generally should be made available only for students in grades where they are required to access the Internet off-campus for their homework and for other educational purposes.”²⁷⁹ WISPA also agrees that funding for Wi-Fi hotspots should be limited to post-kindergarten students who are more likely to need Internet access for educational purposes.²⁸⁰

81. We agree and make Head Start, pre-kindergarten, and kindergarten populations ineligible for E-Rate-supported Wi-Fi hotspots for off-premises use, consistent with the support of commenters. As noted in the *NPRM*, studies recommend an hour or less of Internet exposure for children under the age of five.²⁸¹ Therefore, for these populations the risks may outweigh the benefits of receiving an E-Rate-supported Wi-Fi hotspot for off-premises use, and as a result, these populations are less likely to need the Internet for educational purposes. As mentioned in the *NPRM*, Head Start and/or pre-kindergarten education facilities serving this particular age group may be eligible for E-Rate funding for broadband connectivity to and within their facilities, if determined to be elementary schools under their applicable state laws.²⁸² Commenters also note that kindergarteners are unlikely to need Internet access for off-campus educational uses.²⁸³ We thus limit eligibility for Wi-Fi hotspots and Internet services to post-kindergarten students and school staff. We note, however, that for the purposes of calculating the hotspot budgets, we seek to streamline the information collections and will use the full-time student enrollments that are used for category two budgets, which includes kindergarten students and may also include pre-

otherwise transferred by such user in consideration for money or any other thing of value.”); *see also* 47 CFR § 54.513 (codifying the requirement for E-Rate eligible services).

²⁷⁵ *See* Appendix B, adopting 47 CFR § 54.513 (as amended).

²⁷⁶ *NPRM*, 2023 WL 8602208 at *14, para. 33.

²⁷⁷ *Id.* (citing U.S. Department of Health and Human Services, Office of Head Start, *Head Start Services*, <https://www.acf.hhs.gov/ohs/about/head-start> (last visited July 15, 2024)).

²⁷⁸ SECA Comments at 6; WISPA Reply at 6.

²⁷⁹ SECA Comments at 6.

²⁸⁰ WISPA Reply at 6.

²⁸¹ *NPRM*, 2023 WL 8602208 at *14, para. 33 (citing World Health Organization, Guidelines on Physical Activity, Sedentary Behaviour and Sleep For Children Under 5 Years of Age (Apr. 2, 2019), <https://www.who.int/publications/i/item/9789241550536> (recommending no more than one hour of screen time for children under 5 years of age)).

²⁸² *NPRM*, 2023 WL 8602208 at *14, para. 33.

²⁸³ *See, e.g.*, SECA Comments at 5; WISPA Reply at 6.

kindergarten students in certain states.

7. Gift Rule & Bundling

82. In providing support for the off-premises use of Wi-Fi hotspots and services, we are also mindful of the longstanding goal of fair and open competitive bidding for such equipment and services. We recognize that many schools and libraries may have taken advantage in recent years of discounted Wi-Fi hotspots and/or recurring services offered during the pandemic to enable their students, school staff, and library patrons to engage in remote learning. We recognize that applicants may have done this while the Commission temporarily waived the gift rules for the ECF and E-Rate programs.²⁸⁴ We remind all E-Rate program participants seeking reimbursement for Wi-Fi hotspots and services of the Commission's gift rules, which prohibit applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-Rate program.²⁸⁵ Similarly, service providers are prohibited from offering or providing any gift or other thing of value to those personnel of eligible entities involved in either program.²⁸⁶ The Commission's gift rule is always applicable to E-Rate program participants and is not in effect or triggered only during the time period when competitive bidding is taking place.²⁸⁷ Additionally, applicants are not permitted to solicit or accept a gift or thing of value over \$20 from a service provider, and service providers are not permitted to offer or provide applicants a gift or thing of value over \$20.²⁸⁸

83. The Commission has previously explained that the gift rule is not intended to discourage charitable donations to E-Rate eligible entities as long as those donations are not directly or indirectly related to E-Rate procurement activities or decisions and provided the donation is not given with the

²⁸⁴ See *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Order*) (initially waiving sections 54.622(h) and 54.503(d) of the Commission's rules through September 30, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 9416 (WCB 2020) (*First RHC and E-Rate Gift Rules Waiver Extension Order*) (extending the waiver of each program's gift rule until December 31, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 14544 (WCB 2020) (*Second RHC and E-Rate Gift Rules Waiver Extension Order*) (extending the waiver of each program's gift rule until June 30, 2021); *Schools and Libraries Universal Service Support Mechanism; Petition for Waiver of Comcast Corporation for Lift Zone Initiative*, CC Docket No. 02-6, Order, 36 FCC Rcd 14349 (WCB 2021) (*Third E-Rate Gift Rule Waiver Extension Order*) (providing a limited waiver of the E-Rate program's gift rule until June 30, 2022); *ECF Order*, 36 FCC Rcd at 8753, para. 122 (providing a limited exception for the ECF program's gift rule until June 30, 2022).

²⁸⁵ 47 CFR § 54.503(d)(1) (“[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein.”); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. “The terms ‘school, library or consortium’ include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such school, library, or consortium with the [E-Rate Program].” 47 CFR § 54.503(d)(2)(i). Consistent with the gift rules applicable to federal agencies, certain de minimis gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

²⁸⁶ 47 CFR § 54.503(d)(1); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. “The term ‘service provider’ includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.” *Id.* at 54.503(d)(2)(ii).

²⁸⁷ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

²⁸⁸ *Id.*

intention of circumventing the competitive bidding or other E-Rate program rules.²⁸⁹ For example, we understand that some service providers offer free or discounted Wi-Fi hotspots with a service plan.²⁹⁰ The gift rule prohibits service providers from offering these kinds of special equipment discounts or equipment with service arrangements to E-Rate recipients only if such offerings are not currently available to some other class of subscribers or segment of the public.²⁹¹

84. Moreover, the record and our experiences in the ECF program have shown that service providers sometimes bundle Wi-Fi hotspots and ineligible components into the costs of services.²⁹² Entities seeking E-Rate support for Wi-Fi hotspots and services for off-premises use are reminded that E-Rate recipients are required to cost-allocate ineligible components that are bundled with eligible equipment or services.²⁹³ With respect to offerings that bundle the costs of the eligible Wi-Fi hotspots and services together, applicants may continue to seek E-Rate funding for eligible components of bundled services. However, for the ease of administration and to streamline review of funding requests, applicants and service providers should itemize these eligible components when invoicing, and Wi-Fi hotspots, services, as well as any eligible components or fees should be requested on separate funding lines when seeking support for these equipment and services.

8. Audits and Other Compliance Tools

85. We consider audits and other review mechanisms in the E-Rate program to be important tools in ensuring compliance with our rules and identifying instances of waste, fraud, and abuse. Considering the action we take today to extend the off-premises uses eligible for E-Rate funding, we expect that these tools will continue to be paramount to our ability to ensure that these finite funds are used appropriately and consistent with our rules. We make clear, therefore, that any support provided for the off-campus use of Wi-Fi hotspots and services under the program will be subject to all audits and reviews currently used by the program (e.g., Beneficiary and Contributor Audit Program (BCAP) audits, Payment Quality Assurance (PQA) assessments, and Program Integrity Assurance (PIA) reviews and Selective Reviews (SR) reviews)²⁹⁴ and could be subject to recovery should the Commission and/or USAC find a violation of our rules and deem it appropriate. Specifically, consistent with existing E-Rate audits and reviews, applicants and service providers may be subject to audits and other investigations to evaluate compliance with the rules we adopt today, including, for example, what equipment and services are eligible and how the equipment and services may be used.

86. As discussed above, the Commission, USAC, and contractor/vendor staff are directed to work with auditors to accept anonymized or deidentified information in response to requests for

²⁸⁹ *Sixth Report and Order*, 25 FCC Rcd at 18802, para. 90; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324, 17328, para. 11 (WCB 2010) (*2010 Clarification Order*) (explaining that charitable donations provided with the purpose of influencing the E-Rate competitive bidding process violate the gift rule).

²⁹⁰ See, e.g., EveryLibrary Institute Comments at 5 (stating that hotspot devices are often bundled with the line of service or even provided without charge).

²⁹¹ *2010 Clarification Order*, 25 FCC Rcd at 17328, para. 11 (“[C]haritable donations are prohibited to the extent they function as inducements to make purchases from the donor in violation of competitive bidding requirements, reduce the applicant’s share of the payment for its services, or might otherwise serve to increase the demand for an existing donor’s services.”).

²⁹² See ALA Comments at 11 (noting that Internet access services and Wi-Fi hotspots are typically available to purchase as a bundle).

²⁹³ See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 29 FCC Rcd 5457, 5462, para. 11 (WCB 2014) (explaining that applicants must deduct the value of ineligible components from funding requests when seeking support for bundled services).

²⁹⁴ 47 CFR § 54.516 (b), (c).

information wherever possible.²⁹⁵ If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient for auditors' or investigative purposes, the auditors or investigators may request that the school or library obtain consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to this personally identifiable information or explore other legal options for obtaining personally identifiable information. In the event consent is not available, we recognize that the auditors may need to use other procedures or take different actions to determine if there is any evidence of waste, fraud, or abuse from the use of E-Rate funding for off-premises Wi-Fi hotspots.²⁹⁶ We additionally delegate to the Bureau and Office of the Managing Director, in consultation with OGC (and specifically the Senior Agency Official for Privacy) the authority to establish requirements for the Bureau's, USAC's, or any contractor's/vendor's collection, use, processing, maintenance, storage, protection, disclosure, and disposal of personally identifiable information in connection with any audit or other compliance tool.

87. We also remind program participants of their obligation to maintain documentation sufficient to demonstrate their compliance with program rules for ten years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.²⁹⁷ And, upon request, they must submit documents sufficient to demonstrate compliance with program rules, including the Wi-Fi hotspot-specific documentation requirements we adopt today, such as maintaining asset and service inventories and acceptable use policies.²⁹⁸ Additionally, schools, libraries, and service providers participating in the E-Rate program may be subject to other audit processes, including audits and inspections by the Office of Inspector General and other entities with authority over the entity.²⁹⁹

F. Legal Authority

88. Sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Communications Act collectively grant the Commission broad and flexible authority to establish rules governing the equipment and services that will be supported for eligible schools and libraries, as well as to design the specific mechanisms of support.³⁰⁰ This authority reflects recognition by Congress that in order to advance its universal service objective, the types of services supported by the various support mechanisms are constantly evolving in light of "advances in telecommunications and information technologies and services."³⁰¹ In the *NPRM*, we sought comment on whether these provisions authorize the Commission to provide E-Rate support for schools or libraries to purchase Wi-Fi hotspots and wireless Internet services for off-premises use, recognizing how today's technology-based educational environment has significantly evolved beyond the physical boundaries of a school or library campus.³⁰² Specifically, we proposed to find that school or library purchases of Wi-Fi hotspots and Internet services for off-premises use by students, school staff, and library patrons for remote learning and the provision of virtual library services constitutes an educational purpose and enhances access to advanced telecommunications and information services pursuant to section 254 of the Communications Act.³⁰³ As explained further below, we conclude that the Commission has authority under section 254 of the Communications Act to permit eligible schools and libraries to receive E-Rate support for the off-premises use of Wi-Fi hotspots and

²⁹⁵ *Supra* para. 73.

²⁹⁶ See *ECF Order*, 36 FCC Rcd at 8757, para. 134.

²⁹⁷ 47 CFR § 54.516(a).

²⁹⁸ *Id.*

²⁹⁹ 47 CFR § 54.516(c)-(d).

³⁰⁰ 47 U.S.C. § 254(c)(1), (c)(3), (h)(1)(B), (h)(2).

³⁰¹ 47 U.S.C. § 254(c)(1).

³⁰² *NPRM*, 2023 WL 8602208 at *24-29, paras. 45-52.

³⁰³ 47 U.S.C. § 254(h)(1)(B) and (h)(2)(A).

wireless Internet services.

89. First, we consider our proposed finding that the off-premises use of school- or library-purchased wireless Internet services and the Wi-Fi hotspots needed to deliver such connectivity constitutes services that are “provide[d] . . . to elementary schools, secondary schools, and libraries,” and thus, may be supported pursuant to section 254(h)(1)(B) of the Communications Act when used “for educational purposes.”³⁰⁴ In response, many commenters agree that section 254(h)(1)(B) of the Communications Act does not prohibit the Commission from allowing E-Rate funds to be used by schools or libraries to support remote learning for students and school staff, and access to library services for library patrons so long as the Commission first finds that the equipment and services that schools or libraries purchase for off-premises use will serve an educational purpose.³⁰⁵ We find this view to be consistent with the Commission’s determination in the *School Bus Wi-Fi Declaratory Ruling* that any future decision to support school or library purchases of E-Rate-supported services requires the Commission to first find that the off-premises use of such service is “integral, immediate, and proximate to the education of students or the provision of library services to library patrons” and, therefore, serves an educational purpose.³⁰⁶

90. Turning next to the question of whether the off-premises use at issue herein serves an educational purpose, many commenters urge the Commission to find that the off-premises use of such wireless Internet services and the Wi-Fi hotspots needed to deliver such connectivity to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.³⁰⁷ For example, the North American Catholic Educational Programming Foundation (NACEPF) and Mobile Beacon argue that “[e]nabling students to participate in hybrid learning, complete their homework, or participate in other educational opportunities clearly qualifies as an ‘educational purpose.’”³⁰⁸ Likewise, commenters assert that Wi-Fi hotspots are needed to ensure library patrons can

³⁰⁴ 47 U.S.C. § 254(h)(1)(B); see also *NPRM* at *25-26, para. 46; *supra* para. 6 (defining “educational purposes”), III.E.1 (discussing safeguards to ensure use is for educational purposes).

³⁰⁵ See, e.g., C Spire Comments at 4 (arguing that none of the terms in section 254(h)(1)(B) “necessarily connotes a geographic limitation on where the services are provided”); SBI Comments at 7-8 (same); SHLB & OTI Comments at 6 (stating that “section 254(h)(1)(B) of the Communications Act does not prohibit the provision of E-Rate support for off-premises services, but merely requires that off-premises use serve primarily educational purposes”). We note, as well, that the safeguards we have put in place, in Section III.E.1 of this Order, serve to ensure that the use of Wi-Fi hotspots provided by schools and libraries will be used “primarily” for educational purposes, as required by our rules. See 47 CFR § 54.504(a)(1)(v); see also *supra* Section III.E.1; Appendix B adopting 47 CFR § 54.516(f) (as amended).

³⁰⁶ See *School Bus Wi-Fi Declaratory Ruling*, 2023 WL 8586523 at *6, para. 9 & n.32.

³⁰⁷ See, e.g., UETN Comments at 3 (agreeing that the off-premises use of mobile wireless services and the Wi-Fi hotspots needed to deliver such connectivity is integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services); Dallas ISD Comments at 1 (supporting the proposal to recognize that off-campus Internet access is “integral, immediate, and proximate to the education of students, serving an educational purpose, and thus, eligible for E-[R]ate support”); SHLB & OTI Comments at 6 (agreeing that the Commission has authority to permit E-Rate support for services used for educational purposes off-premises); CTL Comments at 1 (supporting the proposal to recognize that off-campus Internet access is “integral, immediate, and proximate to the education of students, serving an educational purpose, and thus, eligible for E-[R]ate support”). See also SECA Comments at 4-5, n.7 (conditionally supporting the proposal to find authority under section 254(h)(1)(B) only when students do not have sufficient Internet access service at home to meet their educational needs).

³⁰⁸ See, e.g., NACEPF & Mobile Beacon Reply at 21 (“Here, there is extensive record evidence that high quality connectivity is often essential for students to fully participate in the modern classroom, but that high costs and other factors make this service inaccessible for many students. Thus, the provision of Wi-Fi hotspots is “integral, immediate, and proximate” to those students’ ability to receive an education on equal footing with their peers. The educational purpose of this service could not be clearer.”).

access library services.³⁰⁹ We agree with these commenters. Given the lack of a reliable broadband connection at some students', school staff members', and library patrons' homes, the struggle for many households to afford high-speed broadband (particularly in light of the end of the ACP), and the increasing need for connectivity in today's technology-based educational environment that extends learning beyond a school or library building (e.g., for virtual classes, electronic research projects, homework assignments, virtual library resources, research, etc.), we find that the off-premises use of such wireless Internet services and the Wi-Fi hotspots needed to deliver such connectivity to students, school staff, or library patrons is "integral, immediate, and proximate to the education of students or the provision of library services to library patrons" and, therefore, serves an educational purpose. For example, if a student is unable to complete their homework or participate in a virtual class or research project due to lack of Internet access while off-premises, that lack of access is likely to have an immediate, negative impact on that student's academic performance, which is integral to their education.³¹⁰ Similarly, if a library patron is unable to access work-related research for school or career advancement, that lack of access is likely to have an immediate, negative impact on that patron's career. As such, we find that the connectivity provided through the off-premises use of Wi-Fi hotspots can make a difference in a student's, school staff member's, or library patron's ability to meaningfully engage in learning and fully access library services; the provision of such services thus serves an educational purpose.

91. We disagree with the commenters who assert that "educational purpose" is defined to require a physical link to a school or library campus.³¹¹ Although activities that occur on-campus are presumed to serve an educational purpose,³¹² the Commission has never stated that the inverse would be true (i.e., that all off-premises uses are presumed *not* to be for an educational purpose). To the contrary, the Commission has already recognized that in certain instances, the off-premises use of E-Rate-funded telecommunications services and information services are found to serve an educational purpose, such as when a school bus driver uses wireless telecommunications services while delivering children to and from school,³¹³ or when students use Wi-Fi or similar access point technologies on school buses to complete homework.³¹⁴ A number of commenters agree that it is consistent with this precedent to find that the off-premises use of wireless Internet services and the Wi-Fi hotspots needed to deliver such connectivity

³⁰⁹ See R. Sheffield Comments at 1 (explaining how providing Wi-Fi hotspots has increased the impact of the library for library cardholders and allowed them to access homework, telehealth, continuing education, job upskilling, and more); Laurel-Jones CLS Reply at 1-2 (explaining how successful it has been to lend Wi-Fi hotspots and services in their community that are specifically intended for educational purposes).

³¹⁰ See, e.g., C Spire Comments at 3 ("[I]t is not a secret that the education system of 2024 looks much different than it did twenty-eight years ago. The manner in which students learn is no longer focused inside the physical classroom with books, pencils, and worksheets, but rather it has migrated to what appears on the screen in front of them. Much, if not most of today's schoolwork takes place on the computer and broadband is no longer a tool or resource. It is an essential requirement.").

³¹¹ See, e.g., NTCA Comments at 5-6; WISPA Reply at 1-2.

³¹² *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17; see also 47 CFR § 54.500 (defining "educational purposes").

³¹³ See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-9209, para. 19, n.28; see also *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18778-79, para. 31 (providing E-Rate support for services in the residential areas of certain residential schools that serve unique populations because it would "facilitate ongoing access to educational learning materials beyond the normal school day and increase the ability of those students to complete homework assignments, such as those that require broadband access for research projects, after school hours").

³¹⁴ See *School Bus Wi-Fi Declaratory Ruling*, 2023 WL 8586523 at *6, para. 9 & n.32.

similarly serves an educational purpose.³¹⁵ We further disagree with NTCA's claim that the Commission's prior orders have required that services be physically "tied to a place of instruction."³¹⁶ Although the Commission has previously stated that "the purpose for which support is provided" must "be for educational purposes in a place of instruction,"³¹⁷ neither the Commission nor the statute has defined the physical confines of where instruction can take place, and the *Schools and Libraries Second Report and Order* that NTCA quotes did allow funding for certain off-premises services, demonstrating the Commission's longstanding understanding that "educational purposes in a place of instruction" can include off-premises uses.³¹⁸ Therefore, based on the record and consistent with Commission precedent, we conclude that section 254(h)(1)(B) of the Communications Act allows E-Rate support for services purchased by "elementary schools, secondary schools, and libraries" for the purpose of allowing students, school staff, and library patrons to use those services off-premises for educational purposes. Finally, contrary to NTCA's assertion,³¹⁹ we also find this conclusion is consistent with the statutory language requiring that services be provided "to" schools and libraries because schools or libraries are the customers and recipients of the services they purchase, and the services are therefore provided to them within the meaning of section 254(h)(1)(B), even if used elsewhere.

92. The provision of support to schools and libraries to purchase wireless Internet services for off-premises use for educational purposes fits squarely within the Commission's long-established authority and direction under section 254(h)(1)(B) of the Communications Act to designate "'services that are within the definition of universal service under subsection (c)(3),' which itself authorizes the Commission to designate non-telecommunications services for support under E-Rate."³²⁰ As explained in the *NPRM*,³²¹ the Commission expressly rejected the assertion that the support provided under section 254(h) of the Communications Act is limited to telecommunications services when it concluded in the *First Universal Service Order* that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services *and* additional services such as information services.³²² Pursuant to this longstanding precedent, authority provided by section

³¹⁵ See, e.g., ALA Comments at 2-3 (agreeing that support for the off-premises use of hotspots and services would be consistent with past E-Rate precedent so long as it is determined to be for educational purposes); EdLiNC Comments at 5-6 (stating that allowing E-Rate to "defray the costs of Wi-Fi hotspots and home connection services is a natural outgrowth of the Commission's earlier decisions that extended E-Rate support beyond schools and libraries to ensure that students continue learning"); The Council Comments at 2.

³¹⁶ See NTCA Comments at 5-6 ("Orders clarifying the definition of 'educational purpose' – while authorizing the use of E-Rate supported services by school and library staff and by members of the community after normal school hours – in every case maintained the requirement that the use of such facilities was tied to a place of instruction. These Orders neither addressed nor authorized the extension of E-Rate supported services or facilities to a residential setting.").

³¹⁷ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9209, para. 20.

³¹⁸ *Id.* at para. 19, n.28.

³¹⁹ See NTCA Comments at 5 (arguing that the text of section 254(h)(1)(B) "makes clear that the services are to be provided 'to' schools and libraries").

³²⁰ See *School Bus Wi-Fi Declaratory Ruling* at *6, para. 9 & n.32; see also *First Universal Service Order*, 12 FCC Rcd at 9009-11, paras. 437-39 (concluding that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services *and* additional services such as information services). Note that this was upheld in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 443-44 (5th Cir. 1999).

³²¹ *NPRM*, 2023 WL 8602208 at *20, para. 47.

³²² In the *First Universal Service Order*, the Commission explained: "[T]he term used in section 254(h)(1)(B), 'any of its services that are within the definition of universal service under subsection (c)(3),' cannot be read as a generic reference to the heading of that section. Rather, the varying use of the terms 'telecommunications services' and 'services' in sections 254(h)(1)(A) and 254(h)(1)(B) suggests that the terms were used consciously to signify
(continued....)

254(h)(1)(B) and section 254(c)(3) is not limited to telecommunications services but also authorizes support for the off-premises use of wireless Internet services.³²³ Further, we find that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act provides authority to support the Wi-Fi hotspot devices that are necessary to provide the wireless Internet services. In the *First Universal Service Order*, the Commission concluded that “we can include ‘the information services’ e.g., protocol conversion and information storage, that are needed to access the Internet, as well as internal connections, as ‘additional services’ that section 254(h)(1)(B), through section 254(c)(3), authorizes us to support.”³²⁴ The Commission further distinguished between ineligible types of peripheral equipment (e.g., laptops) and eligible equipment that is necessary to make the services functional.³²⁵ We find that because Wi-Fi hotspots can provide a critical connection for delivery of Internet service, they fall into the latter category, and we therefore conclude that the Commission has authority under section 254(h)(1)(B) through section 254(c)(3) of the Communications Act to support the off-premises use of Wi-Fi hotspot devices that are needed for the delivery of wireless Internet services.

93. Separately, we find that section 254(h)(2)(A) of the Communications Act authorizes the Commission to permit E-Rate support for the off-premises use of Wi-Fi hotspots and services because hotspots and services that connect students, school staff, and library patrons to digital learning will “enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries.”³²⁶ First, we find that providing support for such equipment and services through the E-Rate program will be “technically feasible and economically reasonable.”³²⁷ This is best demonstrated by the more than one million ECF-funded Wi-Fi hotspots and services that were distributed to students, school staff, and library patrons who may have otherwise lacked access and who were successfully connected to remote learning.³²⁸ Based on those experiences in the ECF program, as well as demand falling short of the E-Rate program’s funding cap for many years and the limited lending program budget mechanism adopted herein, we believe that the cost of funding the off-premises use of Wi-Fi hotspots and services can be accomplished within the E-Rate program’s existing budget.³²⁹

different meanings. In addition, the mandate in section 254(h)(2)(A) to enhance access to “advanced telecommunications and information services,” particularly when read in conjunction with the legislative history as discussed below, suggests that Congress did not intend to limit the support provided under section 254(h) to telecommunications services.” See *First Universal Service Order*, 12 FCC Rcd at 9010-11, para. 439.

³²³ See also SBI Comments at 7 (arguing that Congress understood that learning and education would evolve over time and therefore, provided the Commission the authority to “designate additional services” that “tak[e] into account advances in telecommunications and information technologies and services”).

³²⁴ See *First Universal Service Order*, 12 FCC Rcd at 9010-11, para. 439.

³²⁵ See also *First Universal Service Order*, 12 FCC Rcd at 9021, para. 459 (holding that equipment such as a router is eligible for support if “necessary to transport information all the way to individual classrooms”).

³²⁶ See 47 U.S.C. § 254(h)(2)(A).

³²⁷ *Id.*

³²⁸ See Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited July 15, 2024) (reporting data used to estimate Wi-Fi hotspot devices requested in the ECF program to date); see also *NPRM*, 2023 WL 8602208 at *7, para. 17.

³²⁹ Using data available from the E-Rate program on discount rates, student counts, and square footage, staff estimate that if all eligible E-Rate applicants requested funding up to the limits established today, demand for this program could be up to \$1,634.81 million. However, we do not expect all applicants to participate, nor do we expect them to all request funding for all eligible devices, or to request funding for Wi-Fi hotspot devices annually. Based on the number of students and the library square footage for the applicants that participated in the ECF program, staff estimate that if all previous ECF applicants requested funding up to the limits established today, (continued....)

94. Second, we conclude that funding Wi-Fi hotspots and services for off-premises use will help enhance access for school classrooms and libraries to the broadband connectivity necessary to facilitate digital learning for students and school staff, as well as library services for library patrons who lack broadband access when they are away from school or library premises. As discussed above, the Internet has become critical for equitable access to education.³³⁰ For example, even before the pandemic, a significant number of teachers and students around the country reported requiring an Internet connection to complete homework,³³¹ and after the pandemic, some schools still retain the option to attend classes virtually.³³² Beyond the context of school, digital literacy has become increasingly important in the workforce, with many applications, interviews, and forms that in an earlier era applicants might have used library resources to complete in person are now taking place online.³³³ Yet, a portion of our population still lacks Internet access,³³⁴ meaning that they are unable to engage in such regular educational tasks like

demand for the program would be close to \$900 million. This amount is well under the E-Rate program's annual funding cap and does not take into account the three-year limitation for requesting funding for Wi-Fi hotspot devices. See *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2024*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 24-229, at 2 (WCB Mar. 8, 2024) (announcing the FY 2024 E-Rate funding cap as \$4.940 billion); see Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6 (Mar. 28, 2024) (estimating demand for funding year 2024 as \$3.239 billion, including \$1.921 billion in demand for category one services and \$1.318 billion in demand for category two services); see also *NPRM*, 2023 WL 8602208 at *10, para. 25, n.81 (explaining that E-Rate demand has consistently been below the program's funding cap since 2016).

³³⁰ *Supra* paras. 18-20.

³³¹ See School on Wheels, *The Impact of the Digital "Homework Gap" on our Students* (Nov. 21, 2019), <https://schoolonwheels.org/the-impact-of-the-digital-homework-gap-on-our-students/>; Alia Wong, *Why Millions of Teens Can't Finish Their Homework* (Oct. 30, 2018), <https://www.theatlantic.com/education/archive/2018/10/lacking-internet-millions-teens-cant-do-homework/574402/>.

³³² Annalise Knudson, *NYC to Offer Virtual Option at All Public High Schools* (June 14, 2023), <https://www.govtech.com/education/k-12/nyc-to-offer-virtual-option-at-all-public-high-schools> (explaining how New York City will offer a virtual learning program to all high school students and some middle school students, and how such virtual options enable broader range of course offerings for students, and greater reach to certain student groups, such as those that work jobs).

³³³ See, e.g., Southeast Oklahoma Library System, *Career Development & Resources*, <https://www.seolibraries.com/services/business-career> (last visited July 15, 2024) (providing links to assist job seekers, including online tools to develop resumes and cover letters, and "technology development" resources designed to help individuals grow their technology skills); Arlington Public Library, *For Job Seekers*, <https://library.arlingtonva.us/for-job-seekers/> (last visited July 15, 2024) (providing links to resume and job resources, online job and career resources, and job search eBooks and eAudiobooks); Department of Education, A Call to Action for Closing the Digital Access, Design, and Use Divides: 2024 National Educational Technology Plan (2024), <https://tech.ed.gov/files/2024/01/NETP24.pdf> (describing how digital literacy can be incorporated into school curriculums to help students in and out of the classroom, including for career development); Isaiah Hankel, *The Virtual Interview is the New Resume: What You Need to Know* (May 5, 2022), <https://www.forbes.com/sites/forbesbusinesscouncil/2022/05/05/the-virtual-interview-is-the-new-resume-what-you-need-to-know/?sh=561d4d4486d7> (reporting that employers are leveraging virtual interviews more often than before the pandemic, a trend that is likely to stay); Rebecca Torchia, *Technology in the Classroom & The Benefits for K-12 Schools* (Sep. 16, 2022), <https://edtechmagazine.com/k12/article/2022/09/benefits-integrating-technology-todays-k-12-classrooms-perfcon> (explaining that "[e]ven students who are learning in an in-person environment are using technology in their daily lives" and "[i]ntegrating it into the classroom gives them an opportunity to learn to use tech in a meaningful way").

³³⁴ See Jessica Rosenworcel, *National Broadband Map 3.0: Thankful for Continued Improvements* (Nov. 17, 2023), <https://www.fcc.gov/news-events/notes/2023/11/17/national-broadband-map-30-thankful-continued-improvements> (reporting that more than 7.2 million households in the U.S. lack access to high-speed internet service based on the Commission's broadband mapping initiative).

homework, research, developing or updating resumes, or applying for jobs.³³⁵ For many of these individuals, the Internet access provided by their local school or library is their primary means of accessing such critical resources.³³⁶ The record is filled with examples of how Wi-Fi hotspots and services, in particular, have been very effective at closing this Homework Gap and digital divide.³³⁷ By providing E-Rate support for Wi-Fi hotspots and wireless Internet services that can be used off-premises, the Commission can help schools and libraries to connect, for example, the student who has no way of accessing their homework to prepare for the next day's classroom lesson, or the school staff member who is unable to engage in parent-teacher meetings or professional trainings that take place after the school day ends, or the library patron who needs to attend a virtual job interview or perform bona fide research after their library's operating hours. Thus, we conclude that by permitting support for the purchase of Wi-Fi hotspots and Internet wireless services that can be used off-premises and by allowing schools and libraries to use this technology to connect the individuals with the greatest need to the resources required to fully participate in classroom assignments and in accessing library services, we will thereby extend the digital reach of schools and libraries for educational purposes and allow schools, teachers, and libraries to adopt and use technology-based tools and supports that require Internet access at home. For these reasons, we conclude that the action adopted today is within the scope of our statutory directive under section 254(h)(2)(A) of the Communications Act to enhance access to advanced telecommunications and information services for school classrooms and libraries.³³⁸

95. Furthermore, we agree with commenters that permitting E-Rate support for the off-premises use of Wi-Fi hotspots and services is consistent with the Commission's exercise of its authority under section 254(h)(2)(A) of the Communications Act to establish the Connected Care Pilot Program and to clarify that the use of Wi-Fi on school buses is eligible for E-Rate funding.³³⁹ In establishing the

³³⁵ See The Council Comments at 1 ("Off-campus and remote connectivity that has long been needed for homework and other educational activities is now recognized as an essential part of the education experience, daily instruction, and blended learning for all students"); EdLiNC Comments at 2-3 (explaining that lack of connectivity at home prevents individuals from "completing homework assignments, conducting research, communicating with their teachers and peers, applying for colleges, jobs and government services").

³³⁶ See, e.g., NACEPF & Mobile Beacon Comments at 7-8 (reporting on their 2017 survey where 62% of public libraries reported that they were the only free source of Internet in their community); SBI Comments at 4 (citing examples of Tribal students who are forced to miss school because they are unable to get to campus and how Wi-Fi hotspots would allow them to engage).

³³⁷ See, e.g., EdLiNC Comments at 2-3 ("The home connectivity gap endured by K-12 students and educators is reflective of a larger Digital Divide that America's public libraries have been on the front lines in addressing for many years – initially by providing access to computers and connectivity within their buildings and more recently by lending Wi-Fi hotspots and computing devices to their patrons"), 4-5 (reporting that addressing home internet connectivity must continue to be a priority for educators and policy makers); Tekniam Comments at 1 ("Remote education will continue beyond the pandemic, and Internet access is typically necessary for completing homework assignments. But for many students, the inability of their families to afford Internet access makes it impossible for them to engage in these activities."); ALA Comments at 13 (stating that "Wi-Fi hotspots are one tool in closing the digital divide; they provide thousands of students and library patrons needed connectivity"); The Council Comments at 1 (explaining that "[o]ff-campus and remote connectivity that has long been needed for homework and other educational activities is now recognized as an essential part of the education experience, daily instruction, and blended learning for all students"); SHLB & OTI Comments at 2-3 (reporting how students without home Internet connectivity are unable to take advantage of online educational opportunities like "videos that teachers create to allow students to review a lecture at their own pace"); SBI Comments at 2 (stating that after ECF funding for hotspots ends, "students' need to learn at home has not dissipated").

³³⁸ See 47 U.S.C. § 254(h)(2)(A).

³³⁹ See, e.g., SHLB & OTI Comments at 6 (stating that the Commission's proposal is consistent with the FCC's exercise of authority to establish the Connected Care pilot program and to authorize E-Rate support for Wi-Fi on school buses); NACEPF & Mobile Beacon Reply at 2 (considering the establishment of the Connected Care pilot (continued....))

Connected Care Pilot Program, the Commission found that providing support for patients' home broadband connections expanded health care providers' digital footprints for purposes of providing connected care services and allowed health care providers and patients to overcome the obstacle of cost to adopt beneficial connected care services through the pilot program, thus enhancing eligible health care providers' access to advanced telecommunications and information services.³⁴⁰ As NACEPF & Mobile Beacon explain in their reply comments, similar reasoning exists to support off-premises access for classrooms and libraries: many students lack the broadband connectivity required to fully participate in their education and to complete their assignments. Providing for the off-premises use of Wi-Fi hotspots and services would remove this obstacle and therefore, enhance the ability of classrooms and libraries to connect with learners and enable them to participate fully in their classwork and lessons, and complete their assignments.³⁴¹ We disagree with ACA Connects' assertion that the *NPRM*'s proposal differs from the permissible actions taken in the *School Bus Wi-Fi Declaratory Ruling* because unlike a school bus, which is a school-controlled facility, no nexus exists between the school or library and the off-premises learning location (e.g., a student's home).³⁴² We do not agree that the school or library needs to be in control of a location where the individual learns for there to be a nexus, because we find that this is not in line with the reality of how classroom instruction incorporates online resources (e.g., assignments that must be completed and submitted online—often by a deadline outside of "school hours", schoolwork sent home with a student, online school days, required use of e-books or online videos) or the intent of E-Rate funding.³⁴³ Rather, we find that students, school staff, and library patrons have a direct nexus with their school or library through the provision of remote learning and education and that this nexus will be further strengthened by the safeguards we also impose today.³⁴⁴

96. Finally, we find section 254(h)(2)(A)'s reference to services for "classrooms" includes using E-Rate support to connect students, school staff, and library patrons to valuable digital educational resources when they are not located on the school or library campus. We note that the statute directs the Commission to establish rules to enhance access "for all public and nonprofit elementary and secondary school classrooms . . . and libraries."³⁴⁵ Notably, the text does not say to enhance access to services "at" or "in" school classrooms (or libraries), as would more naturally indicate a tie to a physical location. Moreover, we sought comment in the *NPRM* on whether the reference in section 254(h)(2)(A) of the Communications Act to "elementary and secondary school classrooms . . . and libraries" includes expanding access to supported services that can be used in student, school staff, and library patron homes, given that today's educational environment often extends outside of the physical school or library

program pursuant to section 254(h)(2)(A) to be parallel to the proposal to fund the off-premises use of Wi-Fi hotspots and services in the E-Rate program).

³⁴⁰ *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket No. 18-213, Report and Order, 35 FCC Rcd 3366, 3417-18, paras. 87-88, 90 (2020) (*Connected Care Report and Order*).

³⁴¹ See NACEPF & Mobile Beacon Reply at 20 ("[A]lthough hybrid learning is increasingly common, and students routinely require broadband connectivity to complete assignments, households often lack the broadband connectivity required to fully participate in these forms of education. Funding for off-campus Wi-Fi hotspots helps to remove this obstacle and, therefore, enhances the ability of libraries and classrooms to connect with these learners.").

³⁴² See ACA Connects Comments at 6-7 ("[T]here is at least some nexus that exists between the classroom and a school bus, which does not exist between the classroom and a household. While children are on the school bus, they are at a school-controlled facility. Students at home, by contrast, are at a private facility, not under the guardianship of the school. Thus, even if a plausible argument could be made that a school bus is an extension of the classroom, the same argument cannot be made for a student's home.").

³⁴³ S. Rep. No. 104-230, at 132-33 (1996) (Joint Explanatory Statement), <https://www.congress.gov/104/crpt/srpt230/CRPT-104srpt230.pdf>.

³⁴⁴ See *infra* Section III.E.

³⁴⁵ See 47 U.S.C. § 254(h)(2)(A) (emphasis added).

building.³⁴⁶ In response, many commenters highlight the proliferation of online instruction and remote learning, particularly in the wake of the COVID-19 pandemic.³⁴⁷ Specifically, commenters argue that the language of section 254(h)(2)(A) of the Communications Act should be interpreted to reflect the increasingly hybrid nature of education and enable off-premises access to important educational resources that support learning, such as student access to homework or online classes,³⁴⁸ or educator access to professional learning courses, networks, and materials,³⁴⁹ and library patron access to e-books and virtual programs.³⁵⁰ As exemplified during the COVID-19 pandemic-era campus closures, the physical school building is not the only place where a student can be in “class” and there are myriad reasons why a student, school staff member, or library patron may not be able to travel to the physical campus but still requires access to their remote learning and other educational resources. As such, we conclude that section 254(h)(2)(A)’s reference to “classrooms” is appropriately interpreted to extend beyond the brick and mortar school buildings. Although a few commenters argue that our interpretation is inconsistent with the statute’s use of the word “classroom” because hotspots can be used anywhere,³⁵¹ we disagree. As explained above, in today’s world, effective classroom learning often demands access to the Internet outside of the school or library building, and we therefore continue to believe that the best reading of “for . . . classrooms” allows funding for services that support effective classroom instruction, even if such services are used outside of a brick-and-mortar classroom. At the same time, to ensure we are making the most-effective use of these scarce funds and limiting the off-premises use of Wi-Fi hotspots and services

³⁴⁶ See *NPRM*, 2023 WL 8602208 at *21, para. 51.

³⁴⁷ See, e.g., EdLiNC Comments at 6 (explaining that “allowing E-Rate support for home connectivity would be reflective of much broader trends in K-12 education, with education no longer confined to classrooms and libraries”); American Speech-Language-Hearing Association Comments at 1-2 (ASHA) (“As COVID-19 demonstrated, more flexible access to the internet is vital. The proposed expansion of E-Rate will increase access to critical clinical and professional development resources for educators in school settings, such as educational audiologists and school-based SLPs, to support the learning and achievement of students, especially those with disabilities that ASHA members serve.”); NACEPF & Mobile Beacon Comments at 4-5 (“The ongoing popularity of homeschooling and hybrid teaching have reframed the concept of the “classroom.” Learning can and does occur beyond a school campus or library building.”); ALA Comments at 1 (stating that “the needs of library patrons and students evolve, as well, to rely more heavily on access to virtual and/or hybrid learning”); National Association of Elementary School Principals Comments at 1 (NAESP) (“Broadband internet access is no longer a luxury but now a fundamental requirement for a high-quality K-12 education. Whether it be a virtual or hybrid learning environment; students completing schoolwork at home; or families communicating with school contacts, fast and stable internet connectivity is essential for educational opportunity, equity, and achievement.”); C Spire Comments at 3; SBI Comments at 6 (“At least partially as a result of the pandemic, the classroom is no longer viewed as a brick and mortar building with four walls and a teacher.”).

³⁴⁸ See, e.g., #OaklandUndivided, OUSD Comments at 2 (noting the educational activities that have been digitalized, including “classes, homework, testing, remediation, Individualized Education Program meetings, parent-teacher conferences”); OITCs Comments at 2 (explaining that “[s]tudents and staff need access to online digital resources while off-campus, as well, to engage with supplemental educational materials, complete homework assignments and connect with one another”); Qualcomm Comments at 2 (“For decades and decades, schools have provided textbooks to all students, regardless of their income level, to support learning. Broadband connectivity and end-user devices are the 21st Century version of textbooks.”).

³⁴⁹ See, e.g., EdLiNC Comments at 6 (explaining how educators “increasingly go online from their homes” for professional training).

³⁵⁰ See, e.g., EveryLibrary Institute Comments at 2 (stating that “e-book and e-audiobook circulations have far outpaced physical material circulation, a trend libraries do not expect to reverse”); ALA Comments at 1 (“Increasingly, library services occur outside the walls of the library building with e-books and other ematerial, online author talks, virtual discussion groups, and more; therefore, internet access is essential to accessing the services libraries provide”).

³⁵¹ See, e.g., NTCA Comments at 9; ACA Connects Comments at 3-4.

to educational purposes, we find it necessary to adopt the specific safeguards discussed above.³⁵²

G. Children's Internet Protection Act

97. We conclude that the obligations of the Children's Internet Protection Act (CIPA) apply if the school or library receives E-Rate (or ECF) support for Internet access, Internet service, internal connections, and/or the related network equipment, including Wi-Fi hotspots.³⁵³ Enacted as part of the Consolidated Appropriations Act of 2001, CIPA prohibits certain schools and libraries from receiving funding under section 254(h)(1)(B) of the Communications Act for Internet access, Internet service, or internal connections, unless they comply with specific Internet safety requirements.³⁵⁴ Specifically, CIPA requires schools and libraries "having computers with Internet access"³⁵⁵ to certify that they are enforcing a policy of Internet safety that includes the operation of a technology protection measure (e.g., a filter).³⁵⁶ Congress enacted this law to ensure that children are protected from exposure to harmful material while accessing the Internet provided by a school or library.³⁵⁷ Schools and libraries are therefore required to block or filter visual depictions that are obscene, child pornography, or harmful to minors across all sites, including social media.³⁵⁸ CIPA also requires monitoring the online activities of minors and providing education about appropriate online behavior, including warnings against cyberbullying.³⁵⁹

98. First and foremost, we remain focused on CIPA's intended purpose and expect schools and libraries to take every step necessary to ensure Internet access funded by the E-Rate program remains safe for use by minors. Recognizing that accessing the Internet carries inherent risk for minors, many schools have already implemented measures to restrict students' access to certain websites, including social media.³⁶⁰ For example, one school district in New Mexico relies on a filter to only permit student

³⁵² See *infra* Section III.E.

³⁵³ See *ECF Order*, 36 FCC Rcd at 8746-49, paras. 108, 111-13.

³⁵⁴ Children's Internet Protection Act, H.R. 4577, Pub. L. No. 106-554, 106th Cong., tit. XVII, § 1701-1703, 1711-1712, 1721 (2000) (enacted), available at <https://www.congress.gov/106/plaws/publ554/PLAW-106publ554.pdf>. CIPA is codified at section 254(h)(5)-(6), and section 254(l) of the Communications Act of 1934, as amended. 47 U.S.C. § 254(h)(5)-(6), (l). CIPA requires each covered school and library to certify that the school or library is: (1) "enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers" to visual depictions that are (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) "enforcing the operation of such technology protection measure during any use of such computers" by minors and adults. 47 U.S.C. § 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (h)(6)(B)(i)(ii) and (C)(i)(ii), and (l); 47 CFR § 54.520(c)(1)(i), (c)(2)(i); see also *Federal-State Joint Board on Universal Service; Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001) (2001 CIPA Order); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 26 FCC Rcd 11819 (2011) (2011 CIPA Order).

³⁵⁵ 47 U.S.C. § 254(h)(5)(A)(i), (h)(6)(A)(i).

³⁵⁶ 47 U.S.C. § 254(h)(5)(B)(i) and (C)(i), (h)(6)(B)(i) and (C)(i).

³⁵⁷ See S. Rep. No. 106-141, at 1 (1999), <https://www.congress.gov/106/crpt/srpt141/CRPT-106srpt141.pdf> ("The purpose of the bill is to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the Internet from a school or library receiving Federal Universal Service assistance for provisions of Internet access, Internet service, or internal connection[s].").

³⁵⁸ See 47 U.S.C. § 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (h)(6)(B)(i)(ii) and (C)(i)(ii), and (l); 47 CFR § 54.520(c)(1)(i), (c)(2)(i).

³⁵⁹ 2011 CIPA Order, 26 FCC Rcd at 11821, para. 5 (revising schools' CIPA obligations).

³⁶⁰ See, e.g., Letter from John Windhausen, Jr., Executive Director, SHLB, Megan Janicki, Deputy Director, ALA, Keith Krueger, CEO, CoSN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at n.8 (filed Apr. 15, 2024) (explaining that some schools have chosen to block social media for all students or for younger students

(continued....)

access to selected sites, while also blocking access to sites deemed non-educational.³⁶¹ The top 20 domains where students were denied access by the filter included primarily social media sites, with TikTok and Snapchat comprising roughly 40% of denied requests.³⁶² Schools and libraries, in compliance with the requirements of CIPA, should continuously evaluate the effectiveness of their Internet safety policies and technology protection measures against the shifting nature of potentially harmful online content and the various sites and platforms that make content available to minors.³⁶³ Similarly, many service providers offer network-level filtering in their service offerings to support schools' and libraries' deployment of network-level technology protection measures.³⁶⁴ We recognize that determinations of what is considered appropriate are left to the local communities,³⁶⁵ and we encourage schools and libraries to evaluate the needs of their communities and apply filters as appropriate at the network level to ensure E-Rate-funded Internet is safe for use by minors in line with the intent of the law.³⁶⁶

99. The *NPRM* sought comment on the applicability of CIPA when connecting E-Rate-funded Wi-Fi hotspots to the Internet off-premises, and proposed to require that CIPA applies if the school or library accepts E-Rate or ECF support for Internet access or Internet services, or E-Rate support for internal connections.³⁶⁷ The Commission has previously clarified that Wi-Fi hotspots qualify as eligible "Network Equipment" for Internet access, Internet service, or internal connections and would trigger CIPA compliance for the purchasing school or library.³⁶⁸ In response to the *NPRM*, several

pursuant to their local determination of what is appropriate). *But see* Letter from Annie Chestnut, Policy Analyst, The Heritage Foundation, to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 21-31, at 2 (filed Mar. 29, 2024) (arguing that providing hotspots to minors "provides open-ended Internet access" and "allows kids to connect online without supervision from teachers or parents" including to access social media). Schools and libraries can rely on Internet safety policies and technology protection measures to oversee what can be accessed by minors and restrict access to certain websites that are deemed inappropriate by their local community, including teachers and parents.

³⁶¹ See E-Rate Central Comments at 4, Appx. A (providing an example of Farmington Municipal School District's filtering configuration employed for the Wi-Fi services provided on school buses).

³⁶² *Id.* at Appx. A.

³⁶³ See, e.g., Pew Research Center, *Teens and Internet, Device Access Fact Sheet* (Jan. 5, 2024), <https://www.pewresearch.org/internet/fact-sheet/teens-and-internet-device-access-fact-sheet/> (reporting that 96% of U.S. teens say they use the Internet every day); Monica Anderson et al., *Teens, Social Media and Technology 2023* (Dec. 11, 2023), <https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/> (reporting survey results that show YouTube, TikTok, Snapchat, and Instagram remain popular among teens, while use of Facebook and X (formerly known as Twitter) have declined, and modest use of BeReal, a newer social media application).

³⁶⁴ See, e.g., WIDPI Comments at 3-4 (noting that "most filtering already happens at the network level"); EdLiNC Comments at 16 (noting that some schools already use network-level filtering); *Kajeet 2021 Remote Learning PN* Comments at 3-4 (stating that Kajeet, Verizon, and AT&T offer filtering at the network-level); Cradlepoint Reply, WC Docket No. 21-93, at 6 (rec. Apr. 23, 2021) (explaining that filtering mechanisms generally take place at the network-level).

³⁶⁵ See 47 U.S.C. § 254(l)(2) (stating that a determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library or other authority responsible for making the determination).

³⁶⁶ See *NPRM*, 2023 WL 8602208 at *23, para. 55 (seeking comment on whether to require implementation of technology protection measures at the network-level to ensure that minors are not accessing harmful content through E-Rate-funded Internet).

³⁶⁷ See *id.* at *23, paras. 53-54.

³⁶⁸ See *ECF Order*, 36 FCC Rcd at 8746, para. 112, n.301; see also FCC, *Emergency Connectivity Fund FAQs: FAQ 10.1*, <https://www.fcc.gov/emergency-connectivity-fund-faqs> (last visited July 15, 2024) ("[W]hile CIPA does not impose any requirements on a Wi-Fi hotspot device itself, the purchase of a Wi-Fi hotspot through ECF would (continued....)

commenters express support for requiring CIPA compliance.³⁶⁹ We agree with these commenters and find that the requirements of CIPA apply for off-premises use if the school or library receives E-Rate-funded Internet service, Internet access, internal connections, or related network equipment (including Wi-Fi hotspots).

100. We find the concerns raised about the applicability and privacy implications of CIPA when funding the off-premises use of Wi-Fi hotspots and services unpersuasive.³⁷⁰ We are not aware of any issues with CIPA compliance arising from the ECF program, in which we applied CIPA to off-premises use. Moreover, our rules require schools and libraries to certify to CIPA compliance,³⁷¹ under penalty of reimbursement of funds and enforcement under federal requirements regarding truthful statements.³⁷² The Commission has recognized the “long history” supporting this approach to CIPA compliance in the E-Rate application process.³⁷³ Our rules also provide that the certifying entity may be “the relevant school, school board, local education agency, or other authority with responsibility for administration of the school” or the relevant “library, library board, or other authority with responsibility for administration of the library.”³⁷⁴ We are therefore confident that participants in E-Rate are well positioned to understand and enforce their CIPA obligations.³⁷⁵

101. Finally, we deny requests that E-Rate funds be used to pay for CIPA implementation costs.³⁷⁶ The Commission has previously determined that E-Rate recipients are statutorily prohibited from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for CIPA compliance.³⁷⁷

IV. SEVERABILITY

102. All of the rules that are adopted in this Order are designed to further the support provided

qualify as the purchase of network equipment for internet access, internet service, or internal connections, and would trigger CIPA compliance.”).

³⁶⁹ See, e.g., E-Rate Central Comments at 4; Tekniam Comments at 3; CTIA Reply at 7.

³⁷⁰ See, e.g., NTCA Comments at 8 (questioning the feasibility of CIPA compliance for those connecting to E-Rate-funded Wi-Fi off-premises and whether schools and libraries have the authority to ensure CIPA compliance from within private residences).

³⁷¹ 47 CFR § 54.520(b)-(e).

³⁷² See, e.g., 31 U.S.C. §§ 3729-3730 (civil false claims act); 18 U.S.C. § 287 (criminal false claims act); 18 U.S.C. § 1001 (imposing criminal liability for making false statements); see also 47 CFR § 1.17; *Amendment of Section 1.17 of the Commission’s Rules*, GC Docket No. 02-37, Report and Order, 18 FCC Rcd 4016, 4021, para. 12 (2003).

³⁷³ See *ECF Order*, 36 FCC Rcd at 8749, para. 114.

³⁷⁴ 47 CFR § 54.520(a)(1), (2); see also *2001 CIPA Order*, 16 FCC Rcd at 8194, para. 23 (“Because individual schools or libraries may or may not have the authority to make legally binding commitments, we conclude that the statute permits certifications for schools pursuant to CIPA to be made by the relevant school, school board, local education agency, or other authority with responsibility for administration of the school. We similarly conclude that certifications for libraries pursuant to CIPA may be made by a library, library board, or other authority with responsibility for administration of the library.”).

³⁷⁵ While we acknowledge the “privacy concerns” from CIPA compliance raised by NTCA, we find that these concerns are endemic to CIPA itself, rather than from the actions that we take today. By its nature, CIPA is a monitoring—and not a privacy—statute. Accordingly, we find that our approach here is consistent with CIPA and its purposes, as well as section 254. And, in any event, we find that such “concerns” are outweighed by the connectivity benefits that will result from this order.

³⁷⁶ See EveryLibrary Institute Comments at 2.

³⁷⁷ See *2001 CIPA Order*, 16 FCC Rcd at 8204, paras. 54-55 (“The statutory language is clear—no sources of funds other than those available under the Elementary and Secondary Act of 1965 or the Library Services and Technology Act are authorized for the purchase or acquisition of technology protection measures under CIPA.”).

by the E-Rate program to schools and libraries to ensure affordable access to high-speed broadband and to protect the integrity of the E-Rate program funding. However, each of the separate rules we adopt herein shall be severable. If any of the rules are declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

103. In this Further Notice of Proposed Rulemaking (*FNPRM*), we seek further comment on how to ensure the success of schools and libraries' hotspot lending programs, including through continued collaboration by multiple stakeholders. In particular, we seek comment on the most effective means to ensure that limited E-Rate program funds are being used effectively and efficiently, and that Wi-Fi hotspots and services are being used for educational purposes and are not going unused. In the *Order* above, we focus on ensuring distribution of the Wi-Fi hotspots and setting a maximum period of non-usage that will result in a line being terminated. We also rely on program integrity and post-commitment reviews to check compliance with our rules. Now, we seek to further refine our rules to determine a fair and administratively feasible mechanism to set clear limits on E-Rate support for hotspot devices that have been distributed, but that may have limited periods of non-use, without unfairly burdening both applicants and service providers. As described, the applicant community seeks assurance that schools and libraries do not become the financial guarantors of all service charges for which there was non-usage,³⁷⁸ while service providers assert that they have no way to control or enforce the use of a hotspot provided by an applicant to a student, staff member, or library patron.³⁷⁹ For this reason, we have adopted what we find to be a sensible approach for addressing non-usage by focusing on distribution, prohibiting warehousing, terminating service to lines that go unused for approximately 90 days, and relying on program integrity reviews to check compliance as we begin implementing Wi-Fi hotspot and service support. We now seek further comment on administratively feasible methods to encourage maximal usage of these services and devices.

104. For instance, we seek comment on ways applicants could take active steps to ensure that E-Rate-supported Wi-Fi hotspots are being used by the students, school staff, and library patrons to whom they are distributed. We recognize that even under the best circumstances, there may be students or library patrons who simply do not turn on a device once they have checked it out. In these instances, are there steps the applicant should be required to take in order to decrease the chances that the distributed hotspots go unused by the users? Should schools and libraries be required to have technical support available to teach users how to use the Wi-Fi hotspots or troubleshoot issues that may arise? Should schools and libraries be required to limit the lending period to a short period (e.g., 21 days or less) in order to redistribute hotspots to other students or library patrons that may have both the need and ability to use the hotspot? For longer lending periods, should we impose a specific period of non-usage (e.g., 30 days) after which schools and libraries must seek the return of the hotspot so the device can be loaned out again to another user who will use the device? As described previously, we understand that schools and libraries often already do this, but seek comment on whether such policies and processes should be required before reimbursement is permitted and, if so, what the best approaches are for enforcing this requirement. What other steps can schools and libraries take to ensure the E-Rate-funded hotspots and services are being used by students, school staff members, and library patrons? Are there better ways to implement certifications to reduce the chances that the E-Rate program is supporting Wi-Fi hotspots and services during periods of non-use? To the extent we continue to require applicants to have activated and made the Wi-Fi hotspots available, as well as publicized their availability, is certifying to having taken these steps on the FCC Form 486 prior to submitting their or their service provider's request(s) for reimbursement sufficient? Would requiring applicants to certify to having taken these measures on the request for reimbursement form or some other form provide better certainty that these actions have been

³⁷⁸ See, e.g., SECA Comments at 9-10 (urging the Commission not to mandate monthly usage, but instead to rely on activation and availability due to the nature of hotspot service contracts and the unpredictability of student usage).

³⁷⁹ See, e.g., T-Mobile Comments at 6 (asking the Commission to be flexible and reasonable in setting usage policies, and noting that service providers cannot control or enforce use, or determine the cause for the non-usage).

taken? How else might we ensure that applicants have taken sufficient measures to make effective use of these E-Rate funded hotspots and services? Please include examples from current hotspot lending programs on how non-usage is currently being addressed.

105. We next seek comment on ways service providers could take additional actions to reduce the amount of E-Rate funds being spent on Wi-Fi hotspots and services that are not being actively used by the intended users. Should we shorten the period of non-usage from approximately 90 days and require service providers to terminate service when there are 30 days of unused services associated with a particular Wi-Fi hotspot line of service? If not at 60 days, when should notice to the applicant be made and how? Should we require additional steps or documentation before allowing an applicant to restart service on a terminated line? Is there an appropriate amount of time the applicant should be required to wait to restart the service? Consistent with the category two budgets, applicants may file a request to reduce or cancel a funding commitment in order to use that funding in a future funding year of the budget cycle. However, if the applicant has service terminated due to non-usage, should we consider prohibiting them from later reducing their funding commitment to restore the undisbursed funding to their hotspot budget? We also seek comment on other billing paradigms that could make the program more responsive to usage. Should the Commission consider requiring alternative billing methods, such as usage-based pricing models, for Wi-Fi hotspot service supported by the E-Rate program?³⁸⁰ In effect, this would allow reimbursement from the E-Rate program only for the service that was used, but such an approach would present new difficulties in determining the amount being requested during the FCC Form 471 application. If we use this approach, should the Commission remove the funding cap for recurring service adopted above?³⁸¹ Why or why not?

106. While we are requiring that service providers provide usage reports to applicants at least once per billing cycle, we also seek comment on whether the Commission should require submission of data usage reports during the invoicing process. For example, should service providers provide USAC with reports when an applicant is using fewer than 25% (or some other threshold) of the service lines? Recognizing that the format for these data submissions may also be important to preventing waste and improving program integrity, what structure should data usage reports have and what format should they be provided in? Are there ways to make such data usage reports easier for applicants, and in particular small applicants without dedicated staff for a hotspot lending program, to quickly identify the hotspot devices and services that are going unused? Would it make sense to have the reports identify the number of lines that went unused during a particular billing cycle and reduce the reimbursement for each unused line to a nominal amount, such as \$3, that would pay for the continued access to the network that went unused? Similarly, would additional structure be needed for the applicant asset inventories to better match the data usage reports and would that have value? What steps should the Commission take to make sure the information provided does not include personally identifiable information or other sensitive information? Should there be a data usage threshold higher than zero to consider a line used, and if so, what would that threshold be? Should service providers be required to offer a simple way to remotely discontinue and reestablish lines when requested by the applicant?³⁸² Some libraries reported already having such a mechanism to stop service to a specific device if it is not being used;³⁸³ does the size of the school or library impact the feasibility of implementing such a mechanism for all of the E-Rate funded Wi-Fi hotspots and services in circulation? Why or why not? We also seek comment on the experiences of schools and libraries being able to discontinue and reestablish lines of services when they request to do so from their service provider. Are different levels of service needed depending on the school or library size? Are there provisions regarding non-usage that could be included in a contract between a service

³⁸⁰ See Letter from Ben Weintraub, CEO, Kajeet, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, 1-2 (filed Mar. 14, 2024).

³⁸¹ See *supra* para. 33.

³⁸² See E-Rate Central Comments at 4.

³⁸³ See, e.g., EveryLibrary Institute at 9.

provider and an applicant to help address these concerns in a manner that balances the responsibility between the service provider and applicant? Are there times that an early termination fee for lost or broken hotspot devices should be permitted to ensure that service providers are not left responsible for the cost of a broken hotspot?³⁸⁴

107. We seek comment on these approaches and whether they would benefit the E-Rate program and reduce the amount of funding spent on Wi-Fi hotspots and services during periods of non-use. To the extent applicants and service providers believe burdens would increase under any of these scenarios, we seek detailed information on the potential costs and benefits. What other steps could be taken to reduce that amount of E-Rate funding disbursed for Wi-Fi hotspots and services during periods of non-use? Are there other practices the Commission should adopt to achieve these goals? For instance, should the E-Rate program reduce and limit the number of service lines or the quantity of hotspot devices that can be requested in future funding years based on the applicant's prior funding year data on non-usage?³⁸⁵ Would this incentivize applicants to better right-size their E-Rate supported hotspot lending program? Why or why not?

108. Relatedly, we seek further comment on whether to adopt user access restrictions, such as asking for student credentials, like a school-issued email and password, or more technical limitations on who or which devices may connect to the E-Rate-funded Wi-Fi hotspots.³⁸⁶ To the extent entities already employ user access restrictions, we encourage commenters to provide specific information about the programs they use, the costs they are paying, and the technical functionalities and/or limitations of such restrictions. In the absence of adopting restrictions, we also seek comment on best practices for user access restrictions. Have library hotspot lending programs also implemented user access restrictions? If so, do they differ from school credentialing options? For example, is user access for Wi-Fi hotspots based on the patron's library card or other library loaning access mechanism?

109. *Cybersecurity Risk Management.* We seek comment on ways to encourage cybersecurity best practices and risk management for schools, libraries, and service providers offering Wi-Fi hotspots through E-Rate. The Commission adopted the Schools and Libraries Cybersecurity Pilot Program (Pilot Program) in June 2024 to explore whether and how to utilize USF support to improve cybersecurity practices for K-12 schools and libraries.³⁸⁷ Recognizing the critical needs of schools and libraries to protect their broadband networks and sensitive student, school staff, and library patron data, we seek comment on how to ensure that using E-Rate support for Wi-Fi hotspots does not introduce additional vulnerabilities or risks to cyberattacks. Specifically, we seek comment on whether service providers providing Wi-Fi hotspots and service to schools and libraries in the E-Rate program should be required to implement cybersecurity and supply chain risk management plans.³⁸⁸ Service providers receiving support through the High Cost Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) program are required to develop and submit cybersecurity and supply chain risk management plans to USAC and certify compliance with these requirements. These plans must reflect the latest version of the NIST

³⁸⁴ See *CTIA Ex Parte* at 2 (opposing the prohibition on fees related to lost and broken devices).

³⁸⁵ For example, if 10% of the hotspots distributed were unused, future service line commitments might be limited by 10% in an effort to right-size the number of hotspots that are needed. See *ALA Comments* at 9 (suggesting the use of prior usage reports to limit support for future funding years).

³⁸⁶ See *State Cable Providers Ex Parte* at 1-2 (recommending adoption of user and content restrictions).

³⁸⁷ See *generally Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Report and Order, FCC 24-63, 2024 WL 3010578 (June 11, 2024).

³⁸⁸ *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, FCC 23-74, 2023 WL 6263801 at *16, para. 52 (Sept. 22, 2023); *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, 2023 WL 4784127 at *36, para. 109 & n. 311 (Jul. 24, 2023) (*Enhanced A-CAM Report and Order*). See also Letter from Michael Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2 (filed July 9, 2024) (*NTCA Ex Parte*).

Framework for Improving Critical Infrastructure Cybersecurity and cybersecurity best practices.³⁸⁹ Should service providers receiving support for Wi-Fi hotspots be required to meet the same or similar standards? Are these service providers already in the practice of maintaining these or similar plans? Why or why not? Would a certification on the FCC Form 473 (Service Provider Annual Certification) be sufficient to allay concerns over cybersecurity vulnerabilities faced by schools and libraries? What are the risks of allowing third-party Wi-Fi hotspots access to a network? What burdens would resellers or smaller service providers face in complying with such requirements?

110. *OPEN Government Data Act.* We also seek comment about whether information reported to the FCC or to the Administrator pursuant to the requirements adopted above relating to data usage reports and asset and service inventories are “data assets” potentially subject to the requirements of the OPEN Government Data Act.³⁹⁰ The OPEN Government Data Act,³⁹¹ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.³⁹² This requirement is to be implemented “in accordance with guidance by the Director” of the Office of Management and Budget.³⁹³

111. We tentatively conclude that data usage reports and/or asset and service inventories provided to the Commission or the Administrator do not constitute a “data asset” as defined in 44 U.S.C. § 352(17). A “data asset” is defined as “a collection of data elements or data sets that may be grouped together,”³⁹⁴ and “data” as “recorded information, regardless of form or the media on which the data is recorded.”³⁹⁵ Each usage report and asset and service inventory is separate and distinct from one another, and we do not expect that the information contained in the reports and inventories could readily be grouped together in any meaningful way. We tentatively conclude therefore that, in the absence of a standardized collection form, the proposed collection of data usage reports and asset and service inventories would not constitute a “data asset” subject to the requirements of the OPEN Government Data Act. We seek comment on this tentative conclusion.

³⁸⁹*Id.* at para. 111. *See generally* NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>; *see also* Cybersecurity and Infrastructure Security Agency, Cross-Sector Cybersecurity Performance Goals and Objectives, <https://www.cisa.gov/cpgs> (last visited July 15, 2024) (setting forth cross-sector cybersecurity standards and controls); Center for Internet Security, Critical Security Controls Version 8, <https://www.cisecurity.org/controls> (last visited July 15, 2024) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses); NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (2021), <https://csrc.nist.gov/publications/detail/nistir/8276/final> (presenting key practices); NIST, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (2022), <https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final> (identifying critical success factors).

³⁹⁰ *See supra* para. 66 (requiring service providers to provide reports regarding data usage in a machine-readable digital format to applicants and applicants to make these reports available to the Commission and/or USAC upon request to better enable the Commission “to monitor non-usage” of Wi-Fi hotspots and services by students, school staff, and library patrons during first year of implementation); *see also supra* para. 68 (requiring “E-Rate participants who receive support for the off-premises use of Wi-Fi hotspots and services to maintain detailed asset and service inventories of each hotspot and wireless service provided for use off-premises” and “to present this information upon request to the Commission or USAC.”).

³⁹¹ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

³⁹² 44 U.S.C. § 3502(20), (22) (definitions of “open Government data asset” and “public data asset”); *id.* § 3506(b)(6)(B) (public availability).

³⁹³ OMB has not yet issued final guidance.

³⁹⁴ *Id.* § 3502(17).

³⁹⁵ *Id.* § 3502(16).

112. If, however, our proposed collection of data usage reports and asset and service inventories can be viewed as a “data asset,” we seek comment on the extent to which such information would constitute a “public data asset” under the OPEN Government Data Act. A “public data asset” is “a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under [the Freedom of Information Act (FOIA)].”³⁹⁶ Thus, we seek comment on the extent to which the information contained in these reports and inventories would be protected from disclosure under the FOIA or as personally identifiable information.³⁹⁷ If the information is subject to disclosure under the FOIA, and therefore something the FCC would be required to publish in a machine-readable format, we seek comment on whether we should also require the information to meet certain requirements to enable that publication. Should we require that the information be submitted in machine-readable and structured format to facilitate data analysis regardless of the extent to which the data may be subject to the OPEN Government Data Act public availability requirement?

113. *Promoting Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,³⁹⁸ 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 considerations³⁹⁹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

VI. PROCEDURAL MATTERS

114. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁰⁰ 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.”⁴⁰¹ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

115. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix D. The Commission invites the general public, in particular small

³⁹⁶ 44 U.S.C. § 3502(22).

³⁹⁷ The definition of a public data asset excludes information that would be withheld in fulfilling a Freedom of Information Act request, including any PII (e.g., the name of the person to whom a school provided equipment). Therefore, a public data asset would, by definition, exclude such PII.

³⁹⁸ Section 1 of the Communications Act of 1934, as amended, provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

³⁹⁹ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

⁴⁰⁰ 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).

⁴⁰¹ 5 U.S.C. § 605(b).

businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

116. *Paperwork Reduction Act.* This Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁴⁰² the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. The Further Notice of Proposed Rulemaking seeks comment on possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

118. *Late-Filed Comments.* We note there were several comments filed in this proceeding after the January 16, 2024 comment deadline and January 29, 2024 reply comment deadline. In the interest of having as complete and accurate record as possible, and because we would be free to consider the substance of those filings as part of the record in any event,⁴⁰³ we will accept the late-filed comments and waive the requirements of 47 CFR § 1.46(b), and have considered them in this Report and Order.

119. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

120. *Ex Parte Rules – Permit but Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁰⁴ 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*

⁴⁰² See 44 U.S.C. § 3506(c)(4).

⁴⁰³ See 47 CFR § 1.1206 (discussing *ex parte* filings in permit-but-disclose proceedings).

⁴⁰⁴ 47 CFR §§ 1.1200 *et seq.*

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.

121. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to WC Docket No. 21-31.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs/>.
- 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 courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

123. *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.⁴⁰⁵

124. For additional information on this proceeding, contact Molly O'Connor in the Telecommunications Access Policy Division, Wireline Competition Bureau, at Molly.OConor@fcc.gov or (202) 418-0578.

VII. ORDERING CLAUSES

125. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED effective thirty (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register.

126. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register,

⁴⁰⁵ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

except for sections 54.504(a)(1)(x)-(xii), 54.504(g), and 54.516(e)-(g), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

127. IT IS FURTHER ORDERED that the Office of the Secretary SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

128. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters, Reply Commenters, & Ex Partes

Commenter

A for Arizona, All4Ed, Bluum, Inc., Data Quality Campaign,
 DelawareCAN, EdTrust Louisiana, Education Civil Rights Now,
 Education Reform Now, Education Reform Now, New York, Kids
 First Chicago, National Urban League, Our Turn, SchoolHouse
 Connection, Tennesseans for Student Success, The Education Trust,
 UnidosUS, 2541 LLC
 ACA Connects - America's Communications Association
 Adams 12 Five Star Schools
 Adina Dunn
 American Library Association
 American Speech-Language-Hearing Association
 Anna Segur
 Association of California School Administrators, California School
 Boards Association
 Ben Weintraub, Kajeet
 Billie McGraw
 Brandon Steili
 Branson R. Rasko
 Bryan Davenport
 California Association of School Business Officials
 Carol Anne DeLuca
 Cellular South Licenses, LLC
 Cindy Murdock Ames
 Council of the Great City Schools
 Cox Communications, Inc.
 CTIA
 CTL Corporation
 Dallas Independent School District
 Donna Jahnke
 Dr. Gladys Cruz
 Education & Libraries Networks Coalition
 Electronic Privacy Information Center
 Elizabeth Hoover de Galvez
 Enterprise Wireless Alliance
 E-Rate Central
 EveryLibrary Institute NFP
 Funds For Learning, LLC
 Harvey Chauvin
 John Donnelly
 Joseph Clement
 Katie Gallagher
 Kim Whitman
 Kyle McKinney
 Landon Finch, El Paso County School District 8
 Laurel-Jones County Library System, Inc.
 Lee Ann Wentzel
 Leech Lake Band Of Ojibwe
 Lisa Cline

Abbreviation

A for Arizona, et al.
 ACA Connections
 Adams 12
 A. Dunn
 ALA
 ASLHA
 A. Segur
 ACSA-CSBA
 Kajeet
 B. McGraw
 B. Steili
 B. Rasko
 B. Davenport
 CASBO
 C.A. DeLuca
 C Spire
 C. Murdock Ames
 The Council
 Cox
 CTIA
 CTL
 Dallas ISD
 D. Jahnke
 Dr. G. Cruz
 EdLiNC
 EPIC
 E. Hoover de Galvez
 EWA
 E-Rate Central
 EveryLibrary Institute
 Funds For Learning
 H. Chauvin
 J. Donnelly
 J. Clement
 K. Gallagher
 K. Whitman
 K. McKinney
 L. Finch
 Laurel-Jones Libraries
 L. Wentzel
 LLBO
 L. Cline

Commenter

Los Angeles Unified School District
 Lower Yukon School District
 Maine State Library
 Maurice Draggon
 Michael Mahanay
 Mike Jakel
 Mike Porter
 Mikki Grebetz
 Mississippi Center for Justice
 Nana Anokye
 National Association of Elementary School Principals
 NCTA - The Internet & Television Association
 New York State Library
 North American Catholic Educational Programming Foundation, Inc., Mobile Beacon
 NTCA - The Rural Broadband Association
 #OaklandUndivided, Oakland Unified School District
 Ohio Internet Technology Centers
 Qualcomm Incorporated
 Robert Frisby
 Rutland Grade School
 Ryan Sheffield, Private
 Samantha Bodine
 Schools, Health & Libraries Broadband Coalition & Open Technology Institute at New America
 Shelbi Morrison
 Shirley Taylor
 Smith Bagley, Inc.
 State E-Rate Coordinators' Alliance
 Suzanne Hall
 Tekniam, LLC
 Texoma Communications, LLC d/b/a TekWav
 T-Mobile USA, Inc.
 Utah Education and Telehealth Network
 Verizon
 Vincent Bocchino, Denver Public Schools
 Wired Broadband, Inc., Odette Wilkens, President & General Counsel, Forest Hills, NY
 Wisconsin Department of Public Instruction
 WISPA - Broadband Without Boundaries

Abbreviation

LAUSD
 Lower Yukon
 Maine State Library
 M. Draggon
 M. Mahanay
 M. Jakel
 M. Porter
 M. Grebetz
 MCJ
 N. Anokye
 NAESP
 NCTA
 NY State Library
 NACEPF & Mobile Beacon

 NTCA
 #OaklandUndivided, OUSD
 OITCs
 Qualcomm
 R. Frisby
 Rutland Grade School
 R. Sheffield
 S. Bodine
 SHLB & OTI

 S. Morrison
 S. Taylor
 SBi
 SECA
 S. Hall
 Tekniam
 TekWav
 T-Mobile
 UETN
 Verizon
 V. Bocchino
 Wired Broadband, Inc.

 WIDPI
 WISPA

APPENDIX B

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

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.

1. Section 54.500 is amended by adding definitions of “Wi-Fi” and “Wi-Fi hotspot” to read as follows:

§ 54.500 Terms and Definitions

* * * * *

Wi-Fi. “Wi-Fi” is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

Wi-Fi hotspot. A “Wi-Fi hotspot” is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

2. Section 54.502 is amended by redesignating paragraph (e) as (f) and adding paragraph (e) as follows:

§ 54.502 Eligible services.

* * * * *

(e) ***Off-Premises Wi-Fi Hotspot Program.*** Each eligible school district, school operating independently of a school district, library system and library operating independently of a system shall be eligible for support for category one services for a maximum pre-discount budget for off-premises Wi-Fi hotspots and recurring services pursuant to the formula described in paragraphs (e)(1) through (4) and subject to the limitations described in paragraphs (e)(5) through (6) of this section.

(1) *Fixed three-year funding cycle.* Beginning in funding year 2025, each eligible school, school district, library, or library system shall be eligible for a budgeted amount of pre-discount support for category one off-premises Wi-Fi hotspots and recurring services over a three-year funding cycle that will reset every three funding years. Each school, school district, library, or library system shall be eligible for the total available budget less the pre-discount amount of any support received for these services in the prior funding years of that fixed three-year funding cycle.

(2) *School and school district mechanism.* Each eligible school operating independently of a school district or school district shall be eligible for up to a pre-discount price calculated by multiplying the student count by 0.2 and the category one discount rate, rounded up to the nearest ten. This value is then multiplied by \$630. The formula will be based on the number of full-time students.

(3) *Library and library system mechanism.* Each eligible library operating independently of a system, or library system shall be eligible for up to a pre-discount price calculated by multiplying the square footage by 0.0055 and the category one discount rate, rounded up to the nearest ten. This value is then multiplied by \$630.

(4) The available funding for Wi-Fi hotspots is capped at \$90 and services at \$15 per month. An applicant may not request more than 45 percent of the Wi-Fi hotspot budget in a single funding year. Each E-Rate-supported Wi-Fi hotspot must have an accompanying request for recurring service.

(5) At least once every 31 days, service providers shall determine whether any E-Rate-supported lines

have zero data usage in the prior 60 days and provide notice to the applicant of the particular lines within 5 business days. If there is zero data usage for 90 days, service providers shall discontinue service to such lines.

(6) Service providers must exclude or waive early termination fees for lines of service associated with Wi-Fi hotspots that are lost, broken, or unused, including those for which service is discontinued in paragraph (e)(5). Service providers shall not bill applicants for unused lines of service that are discontinued.

(7) The Chief, Wireline Competition Bureau, is delegated authority to adjust the limiting mechanism amounts and the Wi-Fi hotspot program cost caps, after seeking comment on a proposed adjustment.

(8) Eligible schools and libraries are permitted to request and receive support for the purchase of Wi-Fi hotspots and services for off-premises use by:

- (i) In the case of a school, students and school staff; and
- (ii) In the case of a library, patrons of the library.

(9) Support for eligible Wi-Fi hotspots and services used off-premises is limited to not more than one Wi-Fi hotspot per student, school staff member, or library patron.

(f) **Eligible services list process.** The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules for the following funding year. The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. The final list of services eligible for support will be released at least 60 days prior to the opening of the application filing window for the following funding year.

3. Section 54.504 is amended by adding paragraphs (a)(1)(x) through (xii), and (g) to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(x) The school, library, or consortium is not seeking support and reimbursement for eligible equipment and/or services that have been purchased and reimbursed with other federal, state, Tribal, or local funding.

(xi) The school, library, or consortium will create and maintain an asset and service inventory as required by § 54.516(e).

(xii) The school, library, or consortium will not use Wi-Fi hotspots or service as part of a one to one Wi-Fi hotspot initiative, nor will the Wi-Fi hotspots be purchased for future use, emergency use, or use in the case of theft, loss, or breakage.

* * * * *

(g) *Off-Premises Wi-Fi Hotspot Certification on the FCC Form 486.* An eligible school, library, or consortium that includes an eligible school or library receiving support for Wi-Fi hotspots and service for use off-premises must certify on FCC Form 486 that the school, library, or consortium has updated and publicly posted their acceptable use policy consistent with the requirements set forth in § 54.516(f); the Wi-Fi hotspots and/or services the school, library, or consortium purchased using E-Rate support for off-premises use have been activated and made available to students, school staff, and/or library patrons; public notice of their availability has been provided; and the authorized person is not requesting reimbursement for Wi-Fi hotspots and/or services that have not been made available for distribution.

4. Section 54.506 is added to read as follows:

§ 54.506 Duplicate support.

Entities participating in the E-Rate program may not seek E-Rate support or reimbursement for eligible

equipment and services that have been purchased and reimbursed with other Federal, state, Tribal, or local funding.

5. Section 54.507 is amended by revising paragraph (f)(4) and adding paragraph (f)(5) to read as follows:

§ 54.507 Cap.

* * * * *

(f) * * *

(4) In the event that demand exceeds available funding, requests for category one services used off-premises shall be funded after on-premises category one and category two services.

(5) For paragraphs (f)(1)-(4) of this section, if the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program. Thus, if there is not enough support to fund all requests at the 40 percent discount level, the Administrator shall allocate funds beginning with those applicants with the highest percentage of NSLP eligibility for that discount level by funding those applicants with 19 percent NSLP eligibility, then 18 percent NSLP eligibility, and shall continue committing funds in the same manner to applicants at each descending percentage of NSLP until there are no funds remaining.

6. Section 54.513 is amended by revising paragraph (b) to read as follows:

§ 54.513 Resale and transfer of services.

* * * * *

(b) ***Disposal of obsolete equipment components of eligible services.*** Eligible equipment components of eligible services purchased at a discount under this subpart shall be considered obsolete if the equipment components have been installed for at least five years, except that Wi-Fi hotspots for off-premises use shall be considered obsolete after three years. Obsolete equipment components of eligible services may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

* * * * *

7. Section 54.516 is amended by revising paragraphs (a)(1) and (b), and adding paragraphs (e), (f), and (g) to read as follows:

§ 54.516 Auditing and inspections.

(a) ***Recordkeeping requirements*** —

(1) ***Schools, libraries, and consortia.*** Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of supported services 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. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Subject to paragraph (e) of this subsection, schools, libraries, and consortia shall maintain asset and inventory records for a period of 10 years after purchase.

* * * * *

(b) ***Production of records.*** Schools, libraries, consortia, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state or federal agency with jurisdiction over the entity. Where necessary for compliance with Federal or state privacy laws, E-Rate participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries,

and consortia must seek consent to provide personally identifiable information from a student who has reach age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

* * * * *

(e) *Asset and service inventory requirements.*

(1) ***Schools.*** Schools, school districts, and consortia including any of these entities, shall keep asset and service inventories as follows:

(i) For equipment purchased as components of supported category two services, the asset inventory must be sufficient to verify the actual location of such equipment.

(ii) For equipment needed to make wireless service for school buses functional, the asset inventory must be sufficient to verify the actual location of such equipment.

(iii) For each Wi-Fi hotspot provided to an individual student or school staff member, the asset and service inventory must identify: 1) the equipment make/model; 2) the equipment serial number; 3) the full name of the person to whom the equipment was provided; 4) the dates the equipment was loaned out and returned, or the date the school was notified that the equipment was missing, lost, or damaged; and 5) the service detail.

(2) ***Libraries.*** Libraries, library systems, and consortia including any of these entities, shall keep asset and service inventories as follows:

(i) For equipment purchased as components of supported category two services, the asset inventory must be sufficient to verify the actual location of such equipment.

(ii) For each Wi-Fi hotspot provided to an individual library patron, the asset and service inventory must identify: 1) the equipment make/model; 2) the equipment serial number; 3) the dates the equipment was loaned out and returned, or the date the library was notified that the equipment was missing, lost, or damaged; and 4) the service detail.

(f) ***Acceptable Use Policies.*** Schools, school districts, libraries, library systems, and consortia including any of these entities that receive support for the off-premises use of Wi-Fi hotspots and/or services, shall maintain, provide notice, and, where necessary, update an acceptable use policy that clearly states that the off-premises use of the Wi-Fi hotspot and/or service is primarily for educational purposes as defined in § 54.500 and that the Wi-Fi hotspot and/or service is for use by students, school staff members, and/or library patrons who need it.

(g) ***Data Usage Reports.*** Service providers shall provide reports regarding Wi-Fi hotspot data usage for off-premises use to applicants, and applicants shall make such reports available to any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state, or federal agency with jurisdiction over the entity upon request. Data usage reports must be in machine-readable digital format so that information lines can be read and sorted, clearly identifying the lines that are not being used across billing periods and the lines that have been terminated pursuant to paragraph 54.502(e)(5).

8. Section 54.520 is amended by revising paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), and (c)(3)(i)(C) to read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for Internet access or internal connections that will not be used in conjunction with a computer owned by the recipient(s).

(2) * * *

(iii) * * *

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for Internet access or internal connections that will not be used in conjunction with a computer owned by the recipient(s).

(3) * * *

(i) * * *

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for Internet access or internal connections that will not be used in conjunction with a computer owned by the recipient(s); and

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Addressing the Homework Gap through the E-Rate Program Notice of Proposed Rulemaking* (“NPRM”), released in November of 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Order

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.⁴ Under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.⁵ The Commission’s E-Rate program provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. The E-Rate program thus plays an important role in closing the digital divide, a top priority for the Commission.

3. In the *Report and Order*, we address the remote learning needs of today’s students, school staff, and library patrons and help close the country’s digital/educational divide by making the off-premises use of Wi-Fi hotspots and services by students, school staff, and library patrons eligible for E-Rate support. The Emergency Connectivity Fund (ECF) program highlighted the demand and need for off-premises use of Wi-Fi hotspots and services for educational success. As mentioned in the NPRM, “[b]roadband access is proven to improve individuals’ educational outcomes, while lack of access has been shown to severely hamper educational opportunities.”⁶ Allowing E-Rate support for the off-premises use of Wi-Fi hotspots and services is an important step to ensure student and library patrons can take advantage of all available educational opportunities, and to help close the “homework gap”, especially as the ECF program is winding down and support under the Affordable Connectivity Program (ACP) ended as of June 1, 2024.

4. In the *Report and Order*, we find that the off-premises use of Wi-Fi hotspots and services constitutes an educational purpose and enhances access to advanced telecommunications and information services for schools and libraries. Applicants will have a calculated budget, limiting the amount of E-Rate support available for Wi-Fi hotspots and services based on applicant size and E-Rate discount rate. This will help schools and libraries create a hotspots lending program, lending Wi-Fi hotspots and services to students or patrons who most need remote access to meet their educational goals. Further, to balance our goal of reducing the digital divide with the responsibility of being a prudent steward of the universal service funds, we adopt funding caps of \$15 month for service and \$90 for a Wi-Fi hotspot (for 3 years) to keep the costs low, limit the impact on the fund, and to encourage support to only those that

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 *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking, FCC 23-91, 2023 WL 8602208 at *30-40, Appendix B (Nov. 8, 2023) (NPRM).

³ 5 U.S.C. § 604.

⁴ See generally 47 U.S.C. § 254.

⁵ 47 CFR § 54.502.

⁶ NPRM, 2023 WL 8602208 at *7, para. 17.

need the devices and services the most. The budget mechanism and funding caps, along with other safeguards (e.g. certifications, competitive bidding, prohibition against duplicative funding, audits, recordkeeping, usage requirements, etc.) will protect program integrity and prevent potential waste, fraud, and abuse. Additionally, we will ensure that off-premises funding for Wi-Fi on school buses and for Wi-Fi hotspots and wireless Internet service does not deter on-premises funding by prioritizing on-campus funding before these off-premises funding requests. Overall, the measures taken in the *Report and Order*, help ensure that off-premises educational opportunities are available to students, school staff, and library patrons with the most need, while also protecting E-Rate's critical funds.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. 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

6. 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.⁷ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million

⁷ 5 U.S.C. § 604(a)(3).

⁸ 5 U.S.C. § 604(a)(4).

⁹ *Id.* § 601(6).

¹⁰ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹¹ 15 U.S.C. § 632.

¹² See 5 U.S.C. § 601(3)-(6).

¹³ 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)

businesses.¹⁴

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁵ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁶ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁷

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁸ U.S. Census Bureau data from the 2022 Census of Governments¹⁹ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number, there were 36,845 general purpose governments (county,²¹ municipal, and town or township²²) with populations of less than 50,000 and 11,879 special purpose governments—independent school districts²³ with enrollment

¹⁴ *Id.*

¹⁵ See 5 U.S.C. § 601(4).

¹⁶ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁷ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico (469).

¹⁸ See 5 U.S.C. § 601(5).

¹⁹ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, , <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

²⁰ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG1700ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-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. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

²¹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2017-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²² See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²³ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879
(continued....)

populations of less than 50,000.²⁴ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁵

1. Schools and Libraries

11. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²⁶ This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.²⁷ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁸ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁹ The Commission does not have a size standard for small entities specifically applicable to schools. The Commission’s definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

12. Under the E-Rate program, an elementary school is generally defined as “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”³⁰ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.³¹ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.³² In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.³³ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA’s small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

13. *Libraries.* The closest applicable industry with a SBA small business size standard is

independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²⁴ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁵ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls.5, 6 & 10.

²⁶ *See* U.S. Census Bureau, *2017 NAICS Definition*, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See* 13 CFR § 121.201, NAICS Code 611110.

³⁰ 47 CFR § 54.500.

³¹ *Id.*

³² 47 CFR § 54.501.

³³ *See* Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

Libraries and Archives.³⁴ This industry comprises establishments primarily engaged in providing library or archive services.³⁵ These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their users.³⁶ These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³⁷ All or portions of these collections may be accessible electronically.³⁸ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁹ For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.⁴⁰ Of this number, 1,228 firms had revenues of less than \$10 million.⁴¹ Based on this data, the majority of firms in this industry can be considered small.

14. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) a Tribal library, (4) an academic library, (5) a research library [] and (6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."⁴² For-profit libraries are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.⁴³ In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.⁴⁴ While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in

³⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "519120 Libraries and Archives," <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

⁴⁰ 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 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴² 47 CFR § 54.500.

⁴³ 47 CFR § 54.501.

⁴⁴ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

the E-Rate program are small entities under the SBA size standard.

2. Telecommunications Service Providers

15. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁴⁵ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁴⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁸

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁵² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁵⁴ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from,

⁴⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁴⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

satellite systems.⁵⁵ Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.⁵⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁸ Of those firms, 1,039 had revenue of less than \$25 million.⁵⁹ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

18. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁶⁰ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁶¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁶² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁶³ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁶⁵ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁶⁶ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

19. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁶⁷ The size

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁶⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁶¹ *Id.*

⁶² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁶ *Id.*

⁶⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁶⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁶⁹ Of this number, 2,837 firms employed fewer than 250 employees.⁷⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁷¹ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.⁷² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

20. *Wired Broadband Internet Access Service Providers (Wired ISPs).*⁷³ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁷⁴ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁷⁵ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁷⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁸

21. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.⁷⁹ The Commission does not collect data on the number of

⁶⁸ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷² *Id.*

⁷³ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁷⁴ See 47 CFR § 1.7001(a)(1).

⁷⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁹ See Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be (continued....)

employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,⁸⁰ we believe that the majority of wireline Internet access service providers can be considered small entities.

22. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.⁸¹ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"⁸² Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁸³ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁸⁴ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁸⁶ Of that number, 2,837 firms employed fewer than 250 employees.⁸⁷

23. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.⁸⁸ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional

accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

⁸⁰ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

⁸¹ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

⁸² Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

⁸³ See 47 CFR § 1.7001(a)(1).

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁸ See *IAS Status 2018*, Fig. 30.

facilities-based providers and the number of wireless mobile virtual network providers in general,⁸⁹ as well as on terrestrial fixed wireless broadband providers in general,⁹⁰ we believe that the majority of wireless Internet access service providers can be considered small entities.

24. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.⁹¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁹² For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁹³ Of those firms, 1,039 had revenue of less than \$25 million.⁹⁴ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

25. *Vendors of Infrastructure Development or Network Buildout*. The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are “Radio and Television Broadcasting and Wireless Communications Equipment”⁹⁵ with a SBA small business size standard of 1,250 employees or less,⁹⁶ and “Other Communications Equipment Manufacturing”⁹⁷ with a SBA small business size standard of 750 employees or less.⁹⁸ U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.⁹⁹ Of this number, 624 firms had fewer than 250

⁸⁹ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (2022 *Communications Marketplace Report*).

⁹⁰ *Id.* at 8, para. 22.

⁹¹ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁹² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁹³ See U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹⁵ See U.S. Census Bureau, 2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

⁹⁶ 13 CFR § 121.201, NAICS Code 334220.

⁹⁷ See U.S. Census Bureau, 2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁹⁸ 13 CFR § 121.201, NAICS Code 334290.

⁹⁹ U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

employees.¹⁰⁰ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.¹⁰¹ Of that number, 310 firms operated with fewer than 250 employees.¹⁰² Based on this data, we conclude that the majority of firms in this industry are small.

26. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.¹⁰³ These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.¹⁰⁴ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹⁰⁵ U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹⁰⁶ Of this number, 177 firms operated with fewer than 250 employees.¹⁰⁷ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

27. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹⁰⁸ 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.¹⁰⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹¹⁰ U.S. Census Bureau data for 2017 show that there were 656

¹⁰⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰¹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰³ See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹⁰⁴ *Id.*

¹⁰⁵ See 13 CFR § 121.201, NAICS Code 334210.

¹⁰⁶ 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 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁷ *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.

¹⁰⁸ 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>.

¹⁰⁹ *Id.*

¹¹⁰ See 13 CFR § 121.201, NAICS Code 334220.

firms in this industry that operated for the entire year.¹¹¹ Of this number, 624 firms had fewer than 250 employees.¹¹² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

28. In the *Report and Order*, we apply existing or modified E-Rate or ECF recordkeeping requirements for the off-premises use of Wi-Fi hotspots and services. We limit the use of services to those that can be supported by and delivered with Wi-Fi hotspots provided to an individual user. Schools and libraries must adopt and provide notice of an acceptable use policy (AUP) highlighting that the goal of the hotspot lending program is to provide broadband access to students and library patrons who need it and for educational purposes. When E-Rate-funded hotspots are used in conjunction with hotspots funded via other sources, applicants must document clearly (e.g., individual survey results or attestations) that each individual student needed a Wi-Fi hotspot, in accordance with the AUPs, and may not rely on general or estimated findings about income levels. Applicants will have a calculated budget, limiting the amount of E-Rate support available for off-premises Wi-Fi hotspots and services based on their full-time student count or library square footage, and their category one discount rate.

29. Additionally, we require applicants to certify on their FCC Form 486 that they have taken reasonable steps to ensure proper use, to prevent warehousing, and to manage non-usage of devices. This will not be overly burdensome, because applicants already use FCC Form 486 to notify USAC that services have started on a particular funding request. Considering the limited funding available, applicants may not request funding for hotspot devices for future use or to be stored in case of an emergency, and we will not allow applicants to purchase extra devices to store in case of theft, loss, or breakage. We find that this would be wasteful in this first year of expanding the program. Each device must be associated with a line of service, and applicants may not request more than 45 percent of the three-year hotspot budget in a single funding year.

30. At least once every 31 days, service providers are required to identify lines of hotspot service that have gone unused for 60 consecutive days and to provide applicants 30 days to use the hotspot before the line of service is terminated. Additionally, service providers must provide data usage reports to applicants at least once per billing period. The reports need to clearly identify the lines that are not being used across billing periods or that will be or have been terminated as a result of non-usage. The usage reports should not be overly burdensome because service providers regularly make such reports available to applicants. Applicants are also required to make these usage reports available to the Commission and/or USAC upon request, including to support program integrity reviews. Service providers are required to certify on their FCC Form 473 (Service Provider Annual Certification (SPAC) Form) that they will comply with this non-usage notice and termination requirement and will not charge the balance for terminated services.

31. Schools are required to maintain a similar, but modified asset and service inventory requirements to the ECF's program's asset and service inventory requirements, which details equipment and service inventories for each device or service purchased with E-Rate support and provided to an individual student or school staff member. The school's asset inventory must identify: 1) the equipment make/model; 2) the equipment serial number; 3) the full name of the person to whom the equipment was provided; 4) the dates the equipment was loaned out and returned, or the date the school was notified that the equipment was missing, lost, or damaged and 5) service detail. By "service detail," we mean the line

¹¹¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

¹¹² *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.

number or other identifier that associates a device to that particular line of service.

32. Taking into consideration the state's library patron privacy laws that some libraries must adhere to and existing library circulation systems and practices, the *Report and Order*, adopts a limited asset and service inventory requirement for libraries. The limited asset and service inventory provides libraries more flexibility in accounting and tracking Wi-Fi hotspots and services funded with E-Rate support. For library participants receiving support for Wi-Fi hotspots and services, the asset and service inventory must identify: 1) the equipment make/model; 2) the equipment serial number; 3) the dates the equipment was loaned out and returned, or the date the library was notified that the equipment was missing, lost, or damaged; and 4) service detail. The asset inventories of schools and libraries will help us verify that there is no warehousing of hotspots, and confirm that hotspots are being used as intended.

33. Consistent with the E-Rate program's current recordkeeping rule, program participants will be required to retain documentation related to their participation in the E-Rate program, including the asset and service inventories, acceptable use policies, and data usage reports for at least ten years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.¹¹³ Commenters are concerned about adopting new recordkeeping requirements, but there is support for maintaining the E-Rate program's existing recordkeeping requirements,¹¹⁴ due to applicants familiarity with the requirements. The recordkeeping adopted in this *Report and Order*, would be similar to what most applicants, including small entities, are already familiar with and currently undertake for the E-Rate and ECF programs. As such, we anticipate that the costs for compliance created by the decisions in the *Report and Order* will be minimal. The recordkeeping requirements also help protect E-Rate funds from potential waste, fraud and abuse.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. 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."¹¹⁵

35. In the *Report and Order*, the Commission minimizes the economic impact on small entities by making the off-premises use of Wi-Fi hotspots and services eligible for E-Rate funding to support remote learning for students, school staff, and library patrons. The availability of E-Rate funding for Wi-Fi hotspots and services gives applicants, including small entities, the opportunity to administer hotspot lending programs and provide students, school staff, and library patrons the off-premise broadband connectivity needed for educational success. The steps taken in this *Report and Order* are especially important now that the ECF program is winding down and applicants will no longer have ECF funding available to meet the remote learning needs of their students, school staff, or library patrons and as of June 1, 2024, ACP support is no longer available for many households as well.

36. We considered the benefits of multi-functional devices, including smartphones, tablets, and laptops with built-in wireless connections, but decline to include them at this time because we do not have sufficient information to justify this use and we found them to be more expensive than sole-function Wi-fi hotspots. Further, equipment such as laptops and tablets remain ineligible for E-Rate support. We recognize that off-premises connectivity provided via Wi-Fi hotspots is not a one-size-fits-all solution, however the actions in the *Report and Order* are a step in creating an economically reasonable method of

¹¹³ See 47 CFR § 54.516(a).

¹¹⁴ EveryLibrary Institute Comments at 10; ALA Comments at 6-7 (urging the FCC to leverage current E-Rate procedures to minimize applicant burden).

¹¹⁵ 5 U.S.C. § 604(a)(6).

meeting our statutory obligations.

37. The *NPRM* asked whether applicants should be required to determine and maintain records of students', school staff members', or library patrons' unmet need by, for example, conducting surveys. Commenters were not in favor of recordkeeping for unmet need.¹¹⁶ Commenters mentioned that schools and libraries are in the best position to know which students and patrons need the hotspots and services most, and therefore, the Commission should not impose recordkeeping requirements for unmet needs, but should allow schools and libraries to determine who to lend the devices and services to.¹¹⁷ In consideration of the comments, and finding that a budget mechanism approach for a lending program reduces the need to implement any unmet needs requirements, the *Report and Order* does not impose recordkeeping requirements for unmet needs. Applicants, including small entities, will be able to determine their unmet need and not be burdened by unmet need documentation.

38. Further, to minimize significant economic impact on applicants, service providers are not allow to bill applicants for the balance that was not paid for by the E-Rate program for terminated lines of service from the non-usage requirements adopted in the *Report and Order*.

39. Finally, any burdens for applicants presented in the *Report and Order* are outweighed by the benefits to applicants. With funding from the E-Rate program applicants will now have the opportunity to offer off-campus access to broadband to help meet the educational necessities of students, staff, and library patrons.

G. Report to Congress

40. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹¹⁸ 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.¹¹⁹

¹¹⁶ Dallas ISD Comments at 4; EveryLibrary Institute Comments at 5-6; WIDPI Comments at 2 (noting that very few schools and libraries have the time or resources to conduct a survey).

¹¹⁷ NACEPF & Mobile Beacon Comments at 18; OITCs Comments at 3-4; SECA Comments at 6-7; EdLiNC Comments at 12-13 (schools should annually collect connectivity data for students, but it should not be required by the Commission).

¹¹⁸ 5 U.S.C. § 801(a)(1)(A).

¹¹⁹ 5 U.S.C. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Addressing the Homework Gap through the E-Rate Program Further Notice of Proposed Rulemaking (FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. The E-Rate program will help fund the off-premises use of Wi-Fi hotspots and services for students, school staff, and library patrons by funding Wi-Fi hotspots and services for schools and libraries to establish lending programs. The primary objective of the *FNPRM* is to seek comments that will help maintain the success of the Wi-Fi hotspots lending programs by ensuring there is usage for educational purposes. In the *FNPRM*, the Commission seeks comments from stakeholders including schools, libraries, and service providers, to come up with an administratively feasible method to encourage maximal usage of the Wi-Fi hotspots and services. The *FNPRM* requests examples on how non-usage is being addressed in current hotspot lending programs. The *FNPRM* invites comments on how to avoid unfairly burdening either applicants or service providers, and asks what steps both can take to reduce non-usage.

3. For example, in the *FNPRM* the Commission asks how to safeguard Wi-Fi hotspots' usage by asking if schools and libraries should have technical support for users and if they should have a limit on the lending period before redistributing the hotspots. The *FNPRM* further requests comments on usage reports and how schools, libraries, and providers can use the reports to assist in preventing non-usage. The *FNPRM* also asks about certifications to reduce the possibility that E-Rate funds are going to unused devices and services. Further, the *FNPRM* requests comments on what further actions, providers and schools should take after the discovery of non-usage. Additionally, the *FNPRM* seeks comment on how to ensure that using E-Rate support for Wi-Fi hotspots does not introduce additional vulnerabilities or risks to cyberattacks. The information and comments requested in the *FNPRM* will help strengthen the integrity of the E-Rate program by ensuring usage of Wi-Fi hotspots and services.

B. Legal Basis

4. The proposed actions are authorized pursuant to sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended.⁴

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), 403.

⁵ 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹¹

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”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 2022, there were approximately 530,109 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

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(3)-(6).

¹⁰ 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).

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 of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2022 Census of Governments¹⁶ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number, there were 36,845 general purpose governments (county,¹⁸ municipal, and town or township¹⁹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁰) with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²²

1. Schools and Libraries

9. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²³ This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.²⁴ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁵ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁶ The Commission does not have a size standard for small entities

¹⁵ 5 U.S.C. § 601(5).

¹⁶ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁷ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-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. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁸ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 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: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 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: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²¹ While the special purpose governments category also includes local special district governments, the 2022 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 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²³ See U.S. Census Bureau, 2017 NAICS Definition, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See 13 CFR § 121.201, NAICS Code 611110.

specifically applicable to schools. The Commission's definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

10. Under the E-Rate program, an elementary school is generally defined as "a non-profit institutional day or residential school that provides elementary education, as determined under state law."²⁷ A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12.²⁸ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.²⁹ In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.³⁰ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

11. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.³¹ This industry comprises establishments primarily engaged in providing library or archive services.³² These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their users.³³ These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³⁴ All or portions of these collections may be accessible electronically.³⁵ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁶ For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.³⁷ Of this number, 1,228 firms had revenues of less than \$10 million.³⁸ Based on this data, the majority of firms in this industry can be considered small.

²⁷ 47 CFR § 54.500.

²⁸ *Id.*

²⁹ 47 CFR § 54.501.

³⁰ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

³¹ See U.S. Census Bureau, 2017 NAICS Definition, "519120 Libraries and Archives," <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22, NAICS Code 519210).

³⁷ 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 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing (continued....)

12. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) a Tribal library, (4) an academic library, (5) a research library [] and (6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."³⁹ For-profit libraries are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.⁴⁰ In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.⁴¹ While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

2. Telecommunications Service Providers

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁴² Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁴³ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁵

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁶ U.S. Census Bureau data for 2017 show that there

data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁹ 47 CFR § 54.500.

⁴⁰ 47 CFR § 54.501.

⁴¹ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

⁴² See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁴⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.⁴⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁴⁹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *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.⁵¹ 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.⁵² Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.⁵³ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵⁴ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁵ Of those firms, 1,039 had revenue of less than \$25 million.⁵⁶ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁵⁷ 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.⁵⁸ The SBA size standard for this industry classifies a business as small if it has

⁴⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁸ *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.

⁴⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁰ *Id.*

⁵¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁵⁶ *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.

⁵⁷ 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>.

⁵⁸ *Id.*

1,500 or fewer employees.⁵⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁶⁰ Of that number, 2,837 firms employed fewer than 250 employees.⁶¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁶² Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁶³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁶⁴ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁶⁵ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁶⁶ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁶⁸ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.⁶⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these service providers.⁷⁰ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that

⁵⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶³ *Id.*

⁶⁴ 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>.

⁶⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁷ *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.

⁶⁸ 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>.

⁶⁹ *Id.*

⁷⁰ 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>.

⁷¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

operated in this industry for the entire year.⁷² Of this number, 2,837 firms employed fewer than 250 employees.⁷³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁷⁴ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Telecommunications Resellers.* The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁷⁶ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷⁷ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁸ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷⁹ U.S. Census Bureau data for 2017 show that 1,386 firms operated in this industry for the entire year.⁸⁰ Of that number, 1,375 firms operated with fewer than 250 employees.⁸¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 666 providers that reported they were engaged in the provision of local or toll resale services.⁸² Of these providers, the Commission estimates that 640 providers have 1,500 or fewer employees.⁸³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *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

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁵ *Id.*

⁷⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸³ *Id.*

a SBA small business size standard.⁸⁴ 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.⁸⁵ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁶ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁷ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁸⁹ Of that number, 1,375 firms operated with fewer than 250 employees.⁹⁰ Additionally, based on Commission data in the 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.⁹¹ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

21. *Wired Broadband Internet Access Service Providers (Wired ISPs).*⁹³ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁹⁴ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁹⁵ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁹⁶ U.S. Census Bureau data for 2017 show that there

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=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.

⁹¹ 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>.

⁹² *Id.*

⁹³ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁹⁴ See 47 CFR § 1.7001(a)(1).

⁹⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁹⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.⁹⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁹⁸

22. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.⁹⁹ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,¹⁰⁰ we believe that the majority of wireline Internet access service providers can be considered small entities.

23. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.¹⁰¹ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹⁰² Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁰³ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁰⁴ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that

⁹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁹ See Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁰⁰ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

¹⁰¹ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹⁰² Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

¹⁰³ See 47 CFR § 1.7001(a)(1).

¹⁰⁴ 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>.

¹⁰⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

operated for the entire year.¹⁰⁶ Of that number, 2,837 firms employed fewer than 250 employees.¹⁰⁷

24. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁰⁸ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 *Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁰⁹ as well as on terrestrial fixed wireless broadband providers in general,¹¹⁰ we believe that the majority of wireless Internet access service providers can be considered small entities.

25. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹¹¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹¹² For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹¹³ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁴ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

26. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹¹⁵ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹¹⁶ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the

¹⁰⁶ See U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁷ *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.

¹⁰⁸ See *IAS Status 2019*, Fig. 30.

¹⁰⁹ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (2022 *Communications Marketplace Report*).

¹¹⁰ *Id.* at 8, para. 22.

¹¹¹ See U.S. Census Bureau, 2017 *NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹¹² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹¹³ See U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹¹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

¹¹⁵ 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>.

¹¹⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.¹¹⁷ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.¹¹⁹ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.¹²⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

4. Vendors of Internal Connections

27. *Vendors of Infrastructure Development or Network Buildout.* Neither the Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are "Radio and Television Broadcasting and Wireless Communications Equipment"¹²¹ with a SBA small business size standard of 1,250 employees or less,¹²² and "Other Communications Equipment Manufacturing"¹²³ with a SBA small business size standard of 750 employees or less.¹²⁴ U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.¹²⁵ Of this number, 624 firms had fewer than 250 employees.¹²⁶ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.¹²⁷ Of that number, 310 firms operated with fewer than 250 employees.¹²⁸ Based on this data, we conclude that the majority of

¹¹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹¹⁸ *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.

¹¹⁹ 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>.

¹²⁰ *Id.*

¹²¹ 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>.

¹²² See 13 CFR § 121.201, NAICS Code 334220.

¹²³ See U.S. Census Bureau, *2017 NAICS Definition*, "334290 Other Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

¹²⁴ 13 CFR § 121.201, NAICS Code 334290.

¹²⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

¹²⁷ 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 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that
(continued....)

firms in this industry are small.

28. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.¹²⁹ These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.¹³⁰ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹³¹ U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹³² Of this number, 177 firms operated with fewer than 250 employees.¹³³ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

29. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹³⁴ 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.¹³⁵ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹³⁶ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹³⁷ Of this number, 624 firms had fewer than 250 employees.¹³⁸ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. The potential rule changes proceeding out of this *FNPRM*, could impose some new or

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.

¹²⁹ See U.S. Census Bureau, *2017 NAICS Definition, “334210 Telephone Apparatus Manufacturing,”* <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹³⁰ *Id.*

¹³¹ See 13 CFR § 121.201, NAICS Code 334210.

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 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&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 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>.

¹³⁵ *Id.*

¹³⁶ See 13 CFR § 121.201, NAICS Code 334220.

¹³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

¹³⁸ *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.

modified reporting, recordkeeping, or other compliance requirements on schools, libraries, service providers, including small entities. The *FNPRM* requests comments on how to prevent non-usage of Wi-Fi hotspots and services funded by the E-Rate program and the comments receive will help determine what reporting, recordkeeping, or other compliance requirements the Commission should adopt to prevent or reduce non-usage. The *FNPRM* specifically seeks comments on data usage reports, and it is possible that schools, libraries, and service providers, including small entities, could have additional requirements related to retaining and producing usage reports and certifications. The *FNPRM* also seeks comments on certifications as a measure to help ensure usage prior to reimbursement. It is also possible that schools, libraries, and service providers, including small entities, could have new requirements related to certifications.

31. Additionally, the *FNPRM* seeks comments on whether applicants should be required to limit the lending period to a shorter period and this may create more recordkeeping, since an increase in the frequency of redistribution is likely to increase the frequency of recording the inventory and asset requirements that are mandatory for a loaned hotspot and service. The *FNPRM* also seeks comment on whether schools and libraries must have technical support available to teach users how to use the Wi-Fi hotspots, and troubleshoot issues as they arise. For service providers, in addition to possible new requirements with usage reports, including making the reports transparent and easier for applicants and the Commission to identify when hotspots are unused, they may also be required to offer a simple way to remotely discontinue and reestablish lines when requested by applicants, which may create more reporting and recordkeeping requirements. Further, applicants and providers may be required to include provisions regarding non-usage in their contracts to help address these concerns in a manner that balances the burden between the provider and applicant. The *FNPRM* also seeks comment on whether service providers providing Wi-Fi hotspots and service to schools and libraries in the E-Rate program should be required to implement cybersecurity and supply chain risk management plans.

32. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the matters upon which the *FNPRM* seeks comment will require small entities to hire professionals to comply. The information we receive in comments, including, where requested, cost information, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *FNPRM*. The Commission will ensure that any reporting, recordkeeping, or other compliance burdens are outweighed by the benefits of protecting the integrity of the E-Rate program, and by having a successful Wi-Fi hotspot lending program to meet the educational needs of students, school staff, and library patrons.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹³⁹

34. In the *FNPRM*, the Commission seeks comment on how to ensure that there is educational usage of the E-Rate supported Wi-Fi hotspots and services. The Commission also requests comments that considers the impact on small entities. For example, the Commission seeks comments on how service providers participating in the E-Rate program for hotspot lending should be required to provide transparent reporting to applicants on data usage that makes it easy for schools and libraries, and

¹³⁹ 5 U.S.C. § 603(c)(1) – (c)(4).

in particular small applicants without dedicated staff for a hotspot lending program, to identify the devices that are going unused. In the *FNPRM*, the Commission considers alternatives by asking if for the E-Rate program, it should consider the requirement of alternative billing methods, such as usage-based pricing models. The *FNPRM* also requests comments on whether service providers should be required to offer a simple way to remotely discontinue and reestablish lines when requested by applicants and if there are different levels of service needed depending on the school or library size.

35. Further, the *FNPRM* seeks comments on potential costs and benefits of the proposed rule changes. The Commission expects the information received in the comments in response to this *FNPRM* will allow it to more fully consider ways to minimize the economic impact on small entities and explore additional alternatives to improve and simplify opportunities for small entities to participate in the E-Rate program, while also ensuring usage in the E-Rate funded school and library hotspot lending programs.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

36. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking (July 18, 2024).

Remember the pandemic? The images from those days still sting. For me, the most searing are the ones that exposed that when we were told to go online for modern life, so many people in so many places lacked the connections they needed to get there. The pictures are hard to forget. We saw students lingering outside of fast food restaurants with laptops on their knees, using the free Wi-Fi just to keep up with school. We saw people who struggled with telemedicine appointments because they did not have the bandwidth they needed to keep up with their healthcare. And we saw it in the parking lots of libraries, where folks sat outside in their cars with their devices just to connect to family, friends, and co-workers.

It is hard to believe this happened in the United States. But we saw it with our own eyes. The pandemic exposed the depth of our Nation's digital divide. We also saw Congress respond quickly to meet the moment by establishing the Emergency Connectivity Fund, which allowed libraries and schools to support internet access through devices and connectivity. But this fund was a one-time effort. It expired this year. Still, it demonstrated what a modern library and school can do to help a community learn without limits and keep connected.

Today we have a choice. We can go back to those days when people sat in parking lots to get a signal to get online and students struggling with the Homework Gap hung around fast food places just to get the internet access they needed do their schoolwork. Or we can go forward and build a digital future that works for everyone.

The Federal Communications Commission has been a long-time champion of libraries and schools. We see clearly the role they play in our digital future. After all, for more than two decades, we have supported the E-Rate program. It is a quiet powerhouse responsible for providing schools and libraries in every state with support for communications. Yet despite E-Rate's overwhelming success connecting schools and libraries, too often that connectivity ends at the edge of the building. The time has come to modernize this program and support students and library patrons wherever they are.

I believe every library and every school library in this country should be able to loan out Wi-Fi hotspots to help keep their patrons and kids connected. It is 2024 in the United States. This should be our baseline. We can use the E-Rate program to make it happen.

That is why today we modernize E-Rate to ensure that schools and libraries nationwide can loan out Wi-Fi hotspots to support high-speed internet access in rural America, urban America, and everything in between. The time to do this is now. We do not need to go back; we can go forward and make it possible for everyone to get the connections they need.

The Communications Act clearly supports this approach. Section 254 directs the agency to update the definition of universal service, which includes E-Rate, so that it evolves over time. That is what we do here. Moreover, in the same section Congress specifically directed the Commission to designate additional services in this program as needed for schools and libraries. Again, that is what we do here. To the extent that classrooms get a mention in the law, the statute makes clear it is descriptive and not restrictive.

We also have developed a way to do this within the existing E-Rate budget. That means this modernization does not require new universal service funds nor does it come at the cost of the support E-Rate provides to connectivity in schools and libraries.

In addition, we establish that the Children's Internet Protection Act applies here. That means, as with other E-Rate supported efforts, providers with hotspot lending programs must comply with this law, which requires restricting access to content that is harmful to minors.

We can help close the digital divide, keep our communities connected, and support the millions of students who fall into the Homework Gap with this updated approach to E-Rate. So let's make it happen.

I want to thank Senator Markey, Senator Van Hollen, and Representative Meng for their commitment to connect students and library patrons across the country. Their work in this area is historic and it has informed our efforts today.

I also want to thank the staff responsible for their work connecting schools and libraries, including Allison Baker, Bryan Boyle, Callie Coker, Kate Dumouchel, Veronica Garcia-Ulloa, Jodie Griffin, Gabriela Gross, Trent Harkrader, Molly O'Connor, Kiara Ortiz, and Johnnay Schrieber from the Wireline Competition Bureau; Jim Bird, Terry Cavanaugh, Sarah Citrin, Thomas Driscoll, Richard Mallen, Rachel May, Erika Olsen, Karen Onyeije, Joel Rabinovitz, Anjali Singh, Elliot Tarloff, and Chin Yoo from the Office of General Counsel; Liesl Himmelberger, Eugene Kiselev, Paul Lafontaine, Cher Li, Eric Ralph, Emily Talaga, and Maciej Wachala from the Office of Economics and Analytics; Warren Firschein and Mark Stephens from the Office of the Managing Director; and Joycelyn James from the Office of Communications Business Opportunities.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking (July 18, 2024).

In 2021, Congress passed a law authorizing the FCC to provide funding that schools and libraries could use to lend Wi-Fi hotspots out to students and patrons.⁵⁴⁵ It was called the Emergency Connectivity Fund or ECF. For my part, I was pleased to work with my FCC colleagues to vote in favor of standing up the ECF program, consistent with the statutory provisions passed by Congress. And I was grateful that my colleagues agreed to a number of my suggestions that helped maximize the program's benefits for those families that remained stuck on the wrong side of the digital divide.

In passing the COVID-era statute, Congress specified a number of limitations on this Wi-Fi initiative. First, Congress provided a specific cap on the amount of taxpayer dollars that could be used on the initiative. Second, Congress provided clear congressional authorization for the FCC to fund hotspots that would be used at locations other than a school or library—a marked contrast, as we will see, from the language that Congress included in the E-Rate portion of the Communications Act. Third, Congress ensured that the initiative would not increase consumers' monthly telecom bills by expressly providing that Universal Service Fund dollars could not be expended on the ECF Wi-Fi effort. And fourth, Congress specifically provided that the program would sunset when the COVID-19 emergency ended—a date that, for ECF purposes, included a transition period that expired at the end of the last month. Congress's decision to include a sunset date makes sense. After all, Congress passed the law to address the spike in remote learning that flowed from the government's decision to close down in person learning.

Now that the ECF program has expired, its future is up to Congress. The Legislative Branch retains the power to decide whether to continue funding this Wi-Fi loaner program—or not. But Congress has made clear that the FCC's authority to fund this initiative is over.

Except that is not how the FCC sees it today. Instead, the Commission cites to Congress's decision to end this Wi-Fi hotspot program as a reason for the FCC to keep it going—and to keep it going in a way that is fundamentally out of step with the decisions that Congress has made. Indeed, the FCC Order runs contrary to every one of the four guardrails that Congress included when it did authorize the FCC to fund Wi-Fi hotspots in the ECF law.⁵⁴⁶ The FCC includes no limit on the amount of ratepayer dollars that can be expended in aggregate over the course of years, no limit on the locations at which the hotspots can be used, no sunset date on the program, and no protection against this program increasing consumers' monthly bills.

Regardless of one's views on the issue as a policy matter, this is not how the Constitution or delegations of authority work. The Supreme Court's recent decision in *Loper Bright* makes this abundantly clear. After *Loper Bright*, the FCC can no longer point to a merely permissible construction of a statute to prevail in court.⁵⁴⁷ Instead, courts will now determine the best reading of the relevant law. So what does the text of the statute say?

In Section 254, Congress limited the FCC's E-Rate authority to enhancing the access of, to use Congress's terms, "classrooms" and "libraries" to telecommunication services—not any remote location

⁵⁴⁵ See American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402.

⁵⁴⁶ See, e.g., FCC Chairwoman Jessica Rosenworcel and Senator Ed Markey, "We Got Millions of Low-Income Students and Families Online Before Funding Expired. Restoring It Is Essential." USNews, June 27, 2024, <https://www.usnews.com/opinion/articles/2024-06-27/we-got-millions-of-low-income-students-and-families-online-before-funding-expired-restoring-it-is-essential>.

⁵⁴⁷ This is not to suggest that the FCC is adopting the type of permissible reading that a court might have deferred to under *Chevron*.

at which people might want to learn.⁵⁴⁸ This language stands in stark contrast to the ECF law. Indeed, unlike the ECF statute, Congress has never authorized the FCC to use its E-Rate program to provide funding that schools and libraries could use to lend Wi-Fi hotspots out to students and patrons—and that is certainly not the best reading of the law. It may be a good idea, but it is not one that Congress has authorized the FCC to carry out. If it were, I would imagine that this FCC or another would have taken this action long ago.

The FCC's erroneous reading of Section 254 is further highlighted by the fact that it has no limiting principle—none. If the FCC can rely on Section 254 to fund students' and patrons' connectivity at locations other than schools and libraries, then I don't see why the FCC's reading would not allow it to use Section 254 as authority to fund Internet service for virtually every single person in the country, since everyone could be either a student or a library patron. That would be an absurd result and out of step with the plain text of the Communications Act. But that is what happens when an agency takes an action that is untethered to the statutory text.

The FCC's decision here and elsewhere to exceed the limits of our E-Rate authorization has not gone unnoticed by Members of Congress that write the laws. Just look at a recent brief that Senator Ted Cruz, Ranking Member of the Senate Commerce Committee, filed in the Fifth Circuit. In a case challenging the FCC's 2023 decision to support Wi-Fi on school busses, Senator Cruz and his Senate colleagues expressed deep concerns about the FCC's "unlawful and misguided" attempts to expand E-Rate support beyond Congressional intent.⁵⁴⁹ "Once limitations are set by Congress, they must be followed—not thwarted—by the federal regulators charged with their enforcement," the Senators wrote.⁵⁵⁰ Yet that is exactly what the Commission does today—again.

But legal authority is not my only concern today. The FCC's decision to expand the USF program has put the entire endeavor on an unsustainable path. While the contribution factor keeps hitting record highs, the FCC is not taking any action to address some of the fundamental contributions, disbursement, and oversight concerns that I and others have been raising for years now. We cannot continue to spend other peoples' money in this way without a real conversation at this agency about reform. I have put ideas out there and would welcome a discussion about paths forward.

My concerns today are only compounded by the lack of data and analysis into the hundreds of millions of dollars that have gone towards supporting various federal and state Wi-Fi hotspot programs that were stood up since 2020. Indeed, the data we do have is concerning. For instance, earlier this year, the Chicago Public Schools' Inspector General published a report that found that every single device from three dozen schools were unaccounted for.⁵⁵¹ And that IG report also showed that during the 2021-2022 school year, more than 77,000 devices were reported lost or stolen—including \$23 million worth of laptops, hotspots, and iPads.

To be sure, one school district's failure to put in place commonsense safeguards doesn't necessarily mean that other efforts will lead to similar results. But it counsels in favor of the FCC ensuring that strong protections are in place.

In closing, I'd like to thank staff from the Wireline Competition Bureau for their work on this item. But because the Order exceeds our authority, I must respectfully dissent.

⁵⁴⁸ 47 U.S.C. § 254(h)(2)(A).

⁵⁴⁹ Brief of U.S. Senators as Amici Curiae in Support of Petitioners, *Molak v. FCC*, Case No. 23-60641, at 2.

⁵⁵⁰ *Id.* at 1.

⁵⁵¹ See Dana Rebik, Peter Curi, "CPS report shows \$23M worth of technology unaccounted for," Jan. 9, 2024, WGN9, <https://wgntv.com/news/chicago-news/cps-report-shows-23m-worth-of-technology-unaccounted-for/>.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 23-31, Report and Order and Further Notice of Proposed Rulemaking (July 18, 2024).

We all know that, for our children, access to broadband at both school and home is vital to reaching their potential. Their education simply doesn't stop when they exit the school building. Instruction, homework, group projects, extra assignments, and more all happen outside of the physical school grounds, and often outside of official school hours. Ensuring that students have the tools to harness this power is critical for their academic development.

Unfortunately, millions of students still lack this power. They do not have access to the Internet, or have inadequate service at home. This number has only increased since the expiration of the Affordable Connectivity Program, where over 35% of the 23 million households enrolled reported using their ACP service to attend school or do homework. During the COVID-19 pandemic, Congress recognized the need for students to access the Internet at home for school and created the Emergency Connectivity Fund (ECF). It proved a fantastic test run for the program we adopt today, showcasing the need to help students outside of their physical school. While ECF sunset at the end of June, the lessons we learned from it have been incorporated into the rules we adopt today to support the use of E-Rate funding for hotspots for those in need.

I am proud to support this Order, which, I note, includes many safeguards to limit the risk of waste, fraud, and abuse, and incentivizes E-Rate recipients to use their limited funds judiciously. I also appreciate the Chairwoman agreeing to my edits to add a section in the Further Notice seeking comment on adding cybersecurity and risk management obligations to providers that supply these hotspots to schools.

I thank the Commission staff for their great work on this item and approve.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 23-31, Report and Order and Further Notice of Proposed Rulemaking (July 18, 2024).

When reading this item, I had thought to quote Jacques's monologue from Shakespeare's *As You Like It* and liken the lines "All the world's a stage, and all the men and women merely players" to today's item: "All the world's a classroom, and all the schools and libraries merely funding conduits." But there is actually another line from that monologue on which I'd prefer to focus: "the whining schoolboy, with his satchel and shining morning face, creeping like snail unwillingly to school." Few children actively *enjoy* school, at least in its instructional aspects, and certainly I was little different. Memorization by rote, homework, tests—who has the time when there is life to be lived? I'm sure most of us can relate, though perhaps not my colleagues on the Commission: all, no doubt, more accomplished pupils than myself.

And why don't kids enjoy school? Because schools are sites of the sometimes boring and usually uncomfortable work of learning. Granted, the ambit of instruction has changed over time, to include the kitchen table, laptops, and even "third spaces." But the classroom does not stretch beyond the horizon into infinity. Not everywhere is a place for children to learn; some places are just for children to play. You may learn anywhere, but classrooms are not everywhere. And while we may kid ourselves that yonder loaned Wi-Fi hotspot is actually a hotbed of learning, I can promise you that, without actual site blocking akin to the Eyes on the Board Act, most of what is learned is going to be "off-menu" as it relates to the school curriculum. The item indicates that, rather than real usage safeguards, children using Wi-Fi hotspots will be governed by a clickwrap acceptable use policy posted on a bulletin board. That's interesting. As it happens, parents often have an "acceptable use policy" for their younger children for all kinds of things, zealously enforced, and yet their usage is often anything but acceptable.

But even if the item had incorporated some version of Eyes on the Board, which might draw students' usage of hotspots more in line toward legitimate uses related to instruction, I still couldn't support the item. We simply lack the authority to take the action we take today. Indeed, our gap-filler E-Rate authority, Section 254(h)(2)(A)—on which this item ought to be premised, even if erroneously—really isn't doing much of the load-bearing work. Section 254(h)(2)(A) provides that the Commission may act to promulgate rules to enhance access to "advanced telecommunications and information services" for "school classrooms and libraries." Tabling for one moment that off-campus Wi-Fi hotspots *obviously* will reduce incentives to physically show up in a classroom, the Commission is only authorized to enhance access *to school classrooms and libraries*. The last I checked, schools, which have classrooms, and libraries, are physical locations with addresses; not philosophical, conceptual ideas of instruction or education. So while it is easy to agree with the notion that children ought to be able to learn anywhere (stipulating to the premise that students will actually use the Wi-Fi hotspots for learning), it is not within the Commission's statutory authority to deliver on that goal by any means necessary. Indeed, when the Commission has argued this point, it has tried to distinguish between "for classrooms" and "in classrooms," indicating that while the latter might tie the Commission's hands as it relates to ubiquitous, global Wi-Fi connectivity, the former does not. Yet if a teacher purchases chalk *for* her classroom, where might you expect to find it? On the school bus? At a student's home? The argument would strike me as silly if it weren't so consequential.

Nor is the Commission's Section 254(h)(1)(B) authority, on which the item principally relies, up to snuff. To be very clear, that provision only relates to telecommunications services provided by telecommunications providers, and no more. Well, last I checked, that's not what a Wi-Fi hotspot is: at least, not yet. And, you'll have to pardon me, but I find the comments in the record supporting our 254(h)(1)(B) authority from the likely beneficiaries of E-Rate funding relatively unavailing on this point. I further disagree that our own precedent—*viz*, the 1997 Universal Service Order or its progeny—actually stands for the proposition cited. The 1997 Order largely centered authority in 254(h)(2)(A) rather than in 254(h)(1)(B) precisely because the Commission at the time recognized that it was limited by the terms of

the former provision to “telecommunications services” and “telecommunications carriers.” The redshift of subsequent Commission decisions to expand the E-Rate program do not distort that truth.

At any rate, the heady days of *Chevron* are behind us and it’s time for the Commission to get serious and start acting like its statute means what it says rather than means whatever it needs to mean in order to secure a desired policy outcome. For these reasons, I dissent.

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

In the Matter of	)	
	)	
Internet Protocol Captioned Telephone Service	)	CG Docket No. 22-408
Compensation	)	
	)	
Telecommunications Relay Services and Speech-	)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing	)	
and Speech Disabilities	)	
	)	
Misuse of Internet Protocol Captioned Telephone	)	CG Docket No. 13-24
Service	)	

REPORT AND ORDER AND ORDER

Adopted: July 31, 2024

Released: July 31, 2024

By the Commission: Commissioners Carr and Simington concurring in part; Commissioner Carr issuing a statement.

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I. INTRODUCTION

1. In this Report and Order, the Federal Communications Commission (Commission) adopts a revised, five-year compensation plan for Internet Protocol Captioned Telephone Service (IP CTS), an important relay service supported by the Interstate Telecommunications Relay Services (TRS) Fund. IP CTS provides functionally equivalent telephone service for individuals with hearing loss, enabling them to both read captions and use their residual hearing to understand a telephone conversation. To ensure that IP CTS providers have the appropriate incentive structure to support captioning with communications assistants (CAs) and with only automatic speech recognition (ASR), we now establish separate compensation formulas for CA-assisted and ASR-only IP CTS. In addition, this compensation plan will give providers certainty regarding the applicable compensation levels, provide an incentive to improve efficiency, and allow the Commission an opportunity to timely reassess the compensation formulas in response to potential unanticipated cost changes and other significant developments.

2. While IP CTS historically has involved the participation of a communications assistant (CA) in the captioning process, IP CTS providers are increasingly producing telephone captions using only an automatic speech recognition (ASR) program—without any help from a CA. Although the unit cost of producing captions is substantially lower when a CA is not involved, usage data show that some consumers continue to prefer CA-assisted captions when given a choice, and there also is evidence that, for some calls, CA-assisted captioning is still the most accurate method. Therefore, under the revised compensation plan, providers will be paid different per-minute amounts for CA-assisted and ASR-only IP CTS, reflecting that there is a significant difference in the average cost of captioning under each method.

3. For CA-assisted service, the current blended compensation rate of \$1.30 per minute is increased to \$1.35 per minute for the remainder of the 2024-25 Fund Year (i.e., from the first day of the first month after the effective date of this Report and Order through June 30, 2025) and is subject to an inflation adjustment at the beginning of each subsequent year of the period, based on an adjustment factor that is a reasonable proxy for changes in the cost of CA-assisted IP CTS. In addition, we allow the application of a higher CA-assisted rate to minutes of CA service handled by CAs whose hourly wages meet or exceed the minimum wage for federal contractors.¹

4. For ASR-only service, we take steps to transition toward a cost-based rate, allowing providers time to adapt their operations to the rate change. The initial ASR-only rate, applicable through June 30, 2025, will be \$1.17, a 10% reduction from the current blended rate of \$1.30 per minute. This rate will be reduced by approximately 10% in the two succeeding years, to \$1.05 in 2025-26 and \$0.95 in 2026-27, and will remain at \$.95 for the remainder of the compensation period.

5. By maintaining an economic incentive for IP CTS providers to use CA-assisted captioning when warranted or when selected by the consumer, we ensure the continued availability of CA-assisted captioning, which research indicates may be essential to provide functionally equivalent service for a substantial portion of IP CTS calls.

¹ See Letter from John T. Nakahata, Counsel to CaptionCall, LLC (CaptionCall), to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 4-5 (filed July 1, 2024) (CaptionCall July 1 *Ex Parte*).

6. In this Report and Order, we also address one discrete issue regarding Internet Protocol Relay Service (IP Relay)—the allowability of research and development expenses—that was raised but not resolved in the Commission’s 2022 Report and Order on IP Relay compensation.²

II. BACKGROUND

A. IP CTS

7. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that TRS are available to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, “to the extent possible and in the most efficient manner.”³ 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.”⁴

8. IP CTS, a form of TRS, “permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an [IP]-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying.”⁵ IP CTS is supported entirely by the TRS Fund, to which telecommunications carriers and Voice over Internet Protocol (VoIP) service providers must contribute based on a percentage of each company’s annual end-user revenue.⁶ IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.⁷

9. Before 2020, IP CTS captions were produced by a CA, usually with the CA repeating (“revoicing”) a caller’s speech into an ASR program, which then converted the CA’s speech to text.⁸ In

² See *infra* para. 36; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123, RM-11820, Report and Order, 37 FCC Rcd 8009, 8019, para. 26 (2022) (*2022 IP Relay Compensation Order*) (deferring resolution of this issue with respect to IP Relay).

³ 47 U.S.C. § 225(b)(1).

⁴ *Id.* § 225(a)(3); 47 CFR § 64.601(a)(43).

⁵ 47 CFR § 64.601(a)(23). “With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the internet rather than the public switched telephone network.” *Id.*

⁶ See 47 CFR § 64.604(c)(5)(iii)(A); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 390, para. 25 (2007) (*2007 IP CTS Declaratory Ruling*); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, 34 FCC Rcd 11265 (2019) (*2019 IP CTS Contributions Order*).

⁷ See 47 CFR § 64.604(c)(5)(iii)(E). The TRS Fund administrator reviews monthly compensation requests and supporting information submitted by providers of IP CTS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable formula.

⁸ See *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 383, para. 8. Since 2014, one IP CTS provider has used Communications Access Realtime Translation (CART), in which a stenographer types the captions without any help from an ASR program. See *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Services Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106 (CGB 2014) (*InnoCaption Conditional Certification*). In another variant of CA-assisted IP CTS, the initial caption may be produced by applying ASR directly to the caller’s speech (as in ASR-only IP CTS), with CA revoicing being used as necessary to correct mistakes. See, e.g., Letter from David A. O’Connor, Counsel to Hamilton Relay, Inc. (Hamilton), to Marlene H. Dortch, FCC, CG Docket Nos. 13-24 and 03-123, at 2 (filed Apr. 9, 2021) (Hamilton

(continued....)

2018, the Commission ruled that IP CTS also could be provided on a fully automatic basis, using only ASR technology to generate captions, without the participation of a CA.⁹ Pursuant to certifications issued by the Consumer and Governmental Affairs Bureau (CGB or Bureau) beginning in 2020, every IP CTS provider is now authorized to use the ASR-only mode to generate captions—either as an alternative to CA-assisted captioning or as its sole mode of providing IP CTS.¹⁰ Among those that use both captioning methods, two providers (Hamilton and InnoCaption) allow users to choose the captioning method they prefer, while two other providers (CaptionCall and ClearCaptions) do not offer such a choice.¹¹ In 2020, the Commission issued a Further Notice of Proposed Rulemaking proposing to include metrics in the minimum TRS standards for IP CTS and seeking comment on how best to measure the performance of the various captioning methods now available.¹² That Further Notice remains pending.

(Continued from previous page)

Apr. 9, 2021 *Ex Parte*) (“[C]ombining the dynamic use of ASR with a CA, in order to allow the voice of the CA or the other party to be directed to the ASR engine, significantly decreased delays in captioning.”).

⁹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48 (2018) (*2018 IP CTS Compensation Order*).

¹⁰ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 03-123 and 13-24, Memorandum Opinion and Order, 35 FCC Rcd 14193 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 7246 (CGB 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, 36 FCC Rcd 13241 (CGB 2021) *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, DA 22-442 (CGB Apr. 20, 2022). In January 2024, the Bureau released orders with conditional certifications to four new entrants to provide ASR-only IP CTS service. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, DA 24-48 (CGB Jan. 17, 2024) (Rogervoice); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, DA 24-49 (CGB Jan. 17, 2024) (NexTalk, Inc.); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, DA 24-11 (CGB Jan. 4, 2024) (Global Caption, Inc.); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, DA 24-12 (CGB Jan. 4, 2024) (Nagish, Inc.).

¹¹ See Comments of ClearCaptions, LLC (ClearCaptions) at 29-30 (filed Mar. 7, 2023) (ClearCaptions Comments) (explaining how it utilizes AI technology to select whether a call is best handled by an ASR or CA, rather than relying on users to choose); Comments of CaptionCall at 14, 22 (filed Mar. 7, 2023) (supporting, but needing to develop the ability for users to switch between CA-based captioning and ASR); Comments of Mezmo Corporation dba InnoCaption (InnoCaption) at 6 (filed March 7, 2023) (InnoCaption Comments); Letter from David A. O’Connor, Counsel to Hamilton, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, Attach. at 10 (filed Nov. 24, 2023) (Hamilton Nov. 24 *Ex Parte*).

¹² *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10897-906, paras. 62-92 (2020) (*2020 IP CTS Compensation Order* or *Telephone Caption Metrics Notice*).

B. IP CTS Compensation

10. Before 2018, compensation for IP CTS providers was determined by a proxy method, known as the Multistate Average Rate Structure (MARS) methodology, in which compensation was set equal to the average per-minute payment by state TRS programs to providers of an analogous service, Captioned Telephone Service (CTS).¹³ In 2018, the Commission determined that this approach had resulted in providers receiving compensation substantially higher than the industry average cost to provide IP CTS.¹⁴ Therefore, the Commission adopted a different methodology, setting compensation based on the weighted average of the actual allowable costs reported by providers (that is, total allowable expenses of all providers divided by total IP CTS minutes).¹⁵ As a transitional measure, the Commission reduced the compensation rate by approximately 10% annually so that, over a four-year period, it would reach the estimated level of providers' average allowable costs (plus a 10% operating margin).¹⁶ As a result, compensation for IP CTS decreased from \$1.9467 per minute in Fund Year 2017-18 to \$1.30 per minute in Fund Year 2021-22.¹⁷

11. In the *2020 IP CTS Compensation Order*, the Commission considered whether to adopt a separate compensation formula for calls captioned without CA involvement, to address what appeared to be the substantially lower average cost of ASR-only captioning. However, the Commission concluded it did not yet have sufficient data from the provision of fully automatic IP CTS to accurately estimate the relevant costs.¹⁸ In June 2022, the Bureau waived the June 30, 2022 expiration of the \$1.30 per-minute compensation formula, extending it to June 30, 2023.¹⁹

12. On December 22, 2022, the Commission released a Notice of Proposed Rulemaking seeking comment on establishing a revised IP CTS compensation plan.²⁰ The Commission proposed to apply different compensation formulas to the provision of CA-assisted and ASR-only IP CTS and sought comment on additional issues potentially affecting the compensation formulas, including the appropriate application of such formulas; identifying the costs attributable to ASR-only captioning; whether to adjust certain allowable-cost criteria and the allowed operating margin; calculation of average per-minute cost and compensation level(s); the duration of the compensation period; adjustment factors for inflation or productivity; and alternatives to reasonable-cost-based compensation.²¹ The Commission received

¹³ With CTS, telephone captioning is provided through the public switched telephone network (PSTN). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 96-67, Declaratory Ruling, 18 FCC Rcd 16121, 16122-23, paras. 3-5 (2003).

¹⁴ *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5809-10, para. 18.

¹⁵ *Id.* at 5814-15, paras. 23-24 (applying average-cost methodology on an interim basis); *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10870, para. 10 (adopting average-cost methodology for IP CTS). In this Report and Order, references to "average" cost refer to a weighted average.

¹⁶ *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5815, para. 24; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10870-71, para. 11.

¹⁷ *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5816, para. 26; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10870-71, para. 11.

¹⁸ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10887, paras. 41-42.

¹⁹ *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, 37 FCC Rcd 7667, 7670-71, paras. 11-14 (CGB 2022) (*2022 TRS Funding Order*).

²⁰ *Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, 37 FCC Rcd 15243, 15247, para. 12 (2022) (*Notice*).

²¹ *Id.*

comments from five providers of IP CTS; a coalition of accessibility advocates and researchers; and Ultratec, which operates a captioning platform used by one IP CTS provider.²² Reply comments were filed by three IP CTS providers; one individual; and Hearing Loss LIVE!, a hearing loss support organization.²³ Two outside consultants for IP CTS providers submitted rate analyses.²⁴

13. On May 1, 2023, the TRS Fund administrator submitted estimates to the Commission of the average cost and demand for CA-assisted and ASR-only IP CTS, based on individual providers' reports (filed in February 2023) of historical cost and demand for calendar years 2021 and 2022 and projected cost and demand for 2023 and 2024.²⁵ Later in 2023, the Bureau placed in the record the individual providers' cost and demand data underlying the administrator's estimates.²⁶ IP CTS providers and others made additional *ex parte* submissions addressing the cost and demand data.²⁷ Noting that the establishment of a compensation plan for IP CTS is inherently complex and that the filing of updated cost data would enable the Commission to consider additional relevant information—especially regarding the cost of ASR-only service—the Bureau extended the current compensation rate through June 30, 2024.²⁸

²² All comments were filed on March 7, 2023, in CG Docket Nos. 22-408, 03-123, and 13-24. *See* CaptionCall Comments; Comments of CaptionMate, LLC (CaptionMate Comments); Comments of Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Communication Service for the Deaf (CSD), National Association of the Deaf (NAD), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC) (AARO Comments); Comments of Ultratec, Inc. and Captel, Inc. (Ultratec Comments); Comments of Hamilton (Hamilton Comments); ClearCaptions Comments; InnoCaption Comments.

²³ All reply comments were filed on April 3, 2023, in CG Docket Nos. 22-408, 03-123, and 13-24. *See* Marc Safman Reply Comment; ClearCaptions Reply Comments (ClearCaptions Reply); Hearing Loss LIVE! Reply Comments (HLL Reply); Reply Comments of CaptionCall (CaptionCall Reply); Reply Comments of Hamilton (Hamilton Reply).

²⁴ *See* FTI Consulting, Inc., "IP CTS Rates Analysis Expert Report" (Apr. 3, 2023), attached to Letter from Tamar Finn, Counsel to ClearCaptions, LLC, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (rec. Apr. 3, 2023) (FTI Rate Analysis); The Brattle Group, "IP CTS Costs and Reimbursement Rates: Comments on FCC's NPRM" (Mar. 6, 2023) (Brattle Report), attached to Hamilton Comments.

²⁵ *See* Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exhs. 1-3, 1-3.a, 1-3.b (filed by CGB, May 1, 2023) (2023 TRS Fund Report).

²⁶ *See* Letter from Michael Scott, CGB, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (confidential) (filed Nov. 6, 2023) (Initial Cost and Demand Reports).

²⁷ *See, e.g.,* Letter from David A. O'Connor, Counsel to Hamilton, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 13-24, and 03-123 (filed Dec. 8, 2023) (Hamilton Dec. 8 *Ex Parte*); Letter from Scott D. Delacourt, Counsel to CaptionMate, LLC (CaptionMate), to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 13-24, and 03-123 (filed Dec. 6, 2023) (CaptionMate Dec. 6 *Ex Parte*); Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 13-24, and 03-123 (filed Nov. 21, 2023) (CaptionCall Nov. 21 *Ex Parte*); Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 13-24, and 03-123 (filed Nov. 9, 2023).

²⁸ *See Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (CGB Dec. 20, 2023) (December 2023 Extension Order); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet Protocol Captioned Telephone Service Compensation*, CG Docket Nos. 03-123 and 10-51, Order, DA 23-1091 (Nov. 17, 2023) (November 2023 Extension Order); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, CG Docket Nos. 03-123 and 10-51, Order, DA 23-577, para. 17 (June 30, 2023) (2023 TRS Funding Order).

14. On April 16, 2024, the Bureau placed in the record the February 2024 reports of seven individual providers, showing historical cost and demand for calendar years 2022 and 2023 and projected cost and demand for 2024 and 2025.²⁹ These were supplemented on May 21 with a cost and demand filing by an eighth provider and an updated report by one of the original seven filing providers.³⁰ The individual providers' cost and demand data are deemed confidential and may be accessed by eligible persons pursuant to the *Third Protective Order* in this docket.³¹

15. On May 1, 2024, the TRS Fund administrator submitted updated estimates of average overall IP CTS cost and demand for calendar years 2022 through 2025, based on the providers' February 2024 reports.³² On May 21, the Bureau placed into the record cost and demand totals for ASR-only and CA-assisted IP CTS, respectively, for the same calendar years, aggregated from the providers' initial and supplemental reports.³³

16. IP CTS providers made additional *ex parte* submissions addressing the updated cost and demand data.³⁴

C. Related Matters

17. On December 23, 2021, Sorenson Communications, LLC (Sorenson), filed a petition seeking a declaratory ruling that (1) costs associated with a Video Relay Service (VRS) provider's field staff are allowable to the extent the staff are performing tasks that are service related and not user equipment related; and (2) field staff time is an allowable cost of providing VRS even when it is part of a longer visit during which staff may perform equipment installation and maintenance.³⁵ In response to a

²⁹ Letter from Michael Scott, CGB, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (filed Apr. 16, 2024) (Updated Cost and Demand Reports) (confidential). The five providers certified for IP CTS prior to January 2024 submitted historical cost for 2021 and 2022 and projected cost for 2023 and 2024. Two of the four providers newly certified in January 2024 submitted projections of cost and demand.

³⁰ Letter from Michael Scott, CGB, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (filed May 21, 2024) (May 21 Cost and Demand Supplements) (confidential).

³¹ *Telecommunications Relay Services and Speech-to Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 03-123, 10-51, and 13-24, Order and Third Protective Order, 33 FCC Red 6802 (CGB 2018).

³² Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exhs. 1-3, 1-3.a, 1-3.b (filed by CGB, May 6, 2024) (2024 TRS Fund Report).

³³ Letter from Michael Scott, CGB, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (confidential) (filed May 21, 2024) (ASR-Only and CA-Assisted Cost and Demand Totals).

³⁴ See, e.g., Letter from David A. O'Connor, Counsel to Hamilton, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed June 6, 2024) (Hamilton June 6 *Ex Parte*); Letter from Cristina O. Duarte, InnoCaption, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed June 6, 2024) (InnoCaption June 6 *Ex Parte*); Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed June 3, 2024) (CaptionCall June 3 *Ex Parte*); Letter from Scott D. Delacourt, Counsel to CaptionMate, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed May 22, 2024) (CaptionMate May 22 *Ex Parte*); Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed May 20, 2024) (ClearCaptions May 20 *Ex Parte*).

³⁵ Petition of Sorenson Communications, LLC for Declaratory Ruling, CG Docket Nos. 10-51 and 03-123, at 1-2 (filed Dec. 23, 2021), <https://www.fcc.gov/ecfs/document/122330636542/1> (Sorenson Field Staff Petition).

public notice seeking comment on Sorenson's petition,³⁶ two IP CTS providers supported the petition and requested that the Commission apply the same treatment to field staff costs incurred by IP CTS providers.³⁷

18. In the *2023 VRS Compensation Order*, responding to Sorenson's petition, the Commission reaffirmed that, because the costs of installing, maintaining, and training customers to use provider-distributed devices (or software for proprietary provider-distributed devices) are not recoverable through TRS Fund compensation, expenses for field staff visits for such purposes are not allowable expenses.³⁸ In addition, the Commission clarified that the reasonable cost of *service*-related work performed by field staff during a visit to a new or current user (e.g., to assist customers with registration, use of VRS on a non-proprietary device, or completing a port) is an allowable cost of providing VRS.³⁹ The Commission stated that these clarifications also apply to field staff costs incurred by IP CTS providers.⁴⁰

III. REPORT AND ORDER

A. Separate Rates for CA-Assisted and ASR-Only IP CTS

1. Need for Separate Rates

19. We amend our rules to establish separate rates for CA-assisted and ASR-only IP CTS. We recognize that, historically, while the Commission has applied separate compensation rates to different relay *services*,⁴¹ the Commission has rarely applied separate rates to different *methods* of

³⁶ *Comment Sought on Petition for Declaratory Ruling Filed by Sorenson Communications, LLC, on Video Relay Service Cost Allocation Methodologies*, CG Docket Nos. 03-123 and 10-51, Public Notice, 36 FCC Rcd 18230 (CGB 2021).

³⁷ See ClearCaptions, LLC Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (filed Jan. 10, 2022); Hamilton Relay, Inc. Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (filed Jan. 10, 2022).

³⁸ *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 Further Notice of Proposed Rulemaking, FCC 23-78, para. 49 (Sept. 28, 2023) (*2023 VRS Compensation Order*).

³⁹ *Id.*

⁴⁰ *Id.*, para. 50.

⁴¹ See, e.g., *Telecommunications Services for Individuals with Hearing and Speech Disabilities; Recommended TRS Cost Recovery Guidelines; Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, 22954-55, para. 17 (2001) (*2001 TRS Rate Methodology Order*) (directing the TRS Fund administrator to develop a separate rate for speech-to-speech relay service (STS); *id.* at 22953, para. 13 (adopting a separate rate for VRS); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 20 FCC Rcd 12237, 12242-43, para. 14 (2005) (concluding that it was no longer appropriate to apply a single rate to traditional TRS and IP Relay, because compensation "should reflect the cost and demand data unique to those services"). On a number of occasions, however, the Commission has applied a single rate to multiple *services* where it could not discern a material difference in their per-minute costs, or there was insufficient information to calculate a specific rate for a new service. *2001 TRS Rate Methodology Order* 16 FCC Rcd at 22953, para. 13 (applying the same interstate rate to Spanish- and English-language relay services "[b]ecause there is no evidence in the record that Spanish relay costs will differ significantly from English relay costs"); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7786, para. 22 (2002) (*IP Relay Declaratory Ruling*) (directing that IP Relay be compensated at the same rate as traditional TRS); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 26 (applying the IP Relay rate to IP CTS); *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, 20156, para. 34 (2007) (*2007 TRS Rate Order*) (compensating STS (apart from an

(continued....)

providing a *single* relay service.⁴² In this instance, however, the record supports the Commission’s initial view that special considerations warrant the application of different compensation formulas to the CA-assisted and ASR-only modes of providing IP CTS. As discussed below: (1) there is a substantial difference between the per-minute costs of ASR-only and CA-assisted IP CTS; (2) for some IP CTS calls, CA-assisted captioning is preferred by consumers; and (3) a single compensation rate creates an incentive for providers to use the lower-cost ASR-only mode, even for calls where a user could benefit from CA involvement.⁴³ The record also supports the concern that continued application of a single formula may lead to waste of TRS Fund resources and increase the risk of fraud and abuse.⁴⁴ Deferring the adoption of separate formulas, as some commenters urge,⁴⁵ would prolong the adverse effects of the single rate and discourage providers from continuing to offer CA-assisted captioning, reducing the availability of a service mode that continues to be preferred for some calls.

20. *Cost Difference.* The updated cost reports confirm that there is a substantial cost difference between ASR-only and CA-assisted IP CTS.⁴⁶ For 2023, historical allowable expenses reported by providers average approximately \$0.60 per minute for ASR-only IP CTS and \$1.04 per minute for CA-assisted IP CTS, a cost difference of \$0.44 per minute.⁴⁷ For 2024, providers’ projected allowable expenses average approximately \$0.65 per minute for ASR-only IP CTS and \$1.32 per minute for CA-assisted IP CTS, a cost difference of \$0.67 per minute.⁴⁸

(Continued from previous page) _____
outreach supplement) at the same rate as traditional TRS); *id.* at 20158, para. 38 (compensating IP CTS at the same rate as CTS).

⁴² The Commission recently adopted a separate per-minute additive to VRS compensation that is only applicable to Video-Text Service, a variant of VRS. *See 2023 VRS Compensation Order*, paras. 104-07. This service is designed to serve a specific subgroup of the eligible population—people who are deafblind and are able to sign to a VRS CA in American Sign Language (ASL) but unable to see well enough to read the CA’s signing of the other party’s speech. *Id.*, paras. 25, 105. Although Video-Text Service is provided on a VRS platform, the output of the service is significantly different from ordinary VRS: With Video-Text Service, the deafblind user signs in ASL to the CA, but the CA converts the other party’s speech to text, not ASL. *Id.*, para. 105.

⁴³ *See Notice*, 37 FCC Rcd at 15248-49, paras. 15-16; Letter from Howard Rosenblum, NAD, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 13-24, and 03-123 at 2 (filed Oct. 17, 2023) (Accessibility Advocates Oct. 17, 2023 *Ex Parte*) (expressing concerns that a single rate has “already had adverse effects for the provision of human-generated captioning, which has higher cost due to the use of paid personnel to generate the captioning” and sharing the groups’ “fear that any improperly assessed rate for IP CTS would drive out all human-generated captioning”).

⁴⁴ *See Notice*, 37 FCC Rcd at 15250, para. 18.

⁴⁵ *See, e.g.*, CaptionMate Comments at 7 (contending that certain relevant costs are currently disallowed); Ultratec Comments at 15-17 (arguing that compensation should not be revised until TRS metrics are in place); InnoCaption Comments at 2-5 (asserting that there is insufficient experience with ASR-only IP CTS to provide reliable cost data). Hamilton, which previously sought a one-year deferral of any bifurcated compensation plan, Hamilton Comments at 2-8, now supports bifurcation of the compensation rate, as do CaptionCall and ClearCaptions. *See* Hamilton June 6 *Ex Parte* at 2; CaptionCall June 2 *Ex Parte* at 1; ClearCaptions May 22 *Ex Parte*, Attach. at 9; Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 1 (filed Dec. 5, 2023) (ClearCaptions Dec. 5 *Ex Parte*).

⁴⁶ Although some commenters disagree with certain allowable-cost criteria or with some providers’ cost accounting practices, *see, e.g., infra* Part III.B.3, no commenter disputes that there is a substantial cost difference between the two modes of service.

⁴⁷ *See 2023 TRS Fund Report*, Exhs. 1-3.a, 1-3.b. (Note that in these exhibits, there is no line for average expenses. Average per-minute expenses are derived by subtracting “Operating Margin” from “Total Cost.”)

⁴⁸ *See ASR-Only and CA-Assisted Cost and Demand Totals.*

Table 1⁴⁹

Per-Minute Cost and Compensation for IP CTS at the Current Compensation Rate

	2023 ⁵⁰			2024 ⁵¹		
	Share of Minutes	Expenses per Minute	Operating Margin ⁵²	Share of Minutes	Expenses per Minute	Operating Margin
ASR-only	74.6%	\$0.60	116.7%	84.5%	\$0.65	100.0%
CA-assisted	25.4%	\$1.04	25.0%	15.5%	\$1.32	-1.5%
Combined ⁵³	100.0%	\$0.72	80.6%	100.0%	\$0.75	73.3%

21. *Benefits of CA-Assisted Service.* The record also confirms that, while consumers increasingly select ASR-only captioning when offered a choice,⁵⁴ CA-assisted captioning continues to be preferred for some portion of IP CTS calls.⁵⁵ Further, some research indicates that ASR technology may show algorithmic bias in the accuracy with which it transcribes voices and that the participation of CAs may improve the accuracy of captioning for a substantial portion of calls.⁵⁶ Establishing separate formulas that better reflect the cost difference between ASR-only and CA-assisted service will strengthen the incentive for providers to continue providing CA-assisted captions when preferred by the consumer or needed for high-quality service.⁵⁷ Conversely, maintaining a single rate is likely to reinforce what

⁴⁹ See *id.*

⁵⁰ Percentages and per-minute averages for 2023 reflect the historical costs reported by the five IP CTS providers that provided compensated IP CTS in 2023. Historical cost submitted by a provider certified in January 2024, which was *not* compensated for service provided in 2023, is not included in the 2023 statistics.

⁵¹ Percentages and amounts for 2024 reflect cost projections reported by the five IP CTS providers that provided compensated IP CTS in 2023 and by two of the four providers newly certified in January 2024. Updated Cost and Demand Reports (confidential); May 21 Cost and Demand Supplements (confidential). Two of the newly certified providers did not report projected cost at the time the Bureau submitted the Updated Cost and Demand Reports to the record. The minutes of demand projected by the excluded providers comprise less than {[]}% of total projected 2024 demand. Updated Cost and Demand Reports (confidential); May 21 Cost and Demand Supplements (confidential).

⁵² The operating margin is calculated by subtracting per-minute expenses from the current per-minute rate and dividing the result by per-minute expenses. For example, the 2023 operating margin for ASR-only IP CTS is $(\$1.30 - \$0.60)/\$0.60 = 1.167$ or 116.7%.

⁵³ This row shows the weighted average of reported expenses per minute for IP CTS as a whole.

⁵⁴ See Updated Cost and Demand Reports (confidential).

⁵⁵ See Ultratec Comments at 17-19; Hamilton Comments at 8-12; AARO Comments at 3-4.

⁵⁶ See *Notice*, 37 FCC Rcd at 15248-49, para. 16 (noting that “a 2020 study of speech recognition systems from five major tech companies found that the systems misidentified words spoken by black individuals at a substantially higher rate than words spoken by white people”); Hamilton Comments at 8-12 (arguing that all IP CTS providers should offer CA-based service for certain calls); CaptionCall Comments at 13, 20-23 (asserting that continued investment and improvement of ASR through research and development is needed to address speech-related biases). Letter from David A. O’Connor, Hamilton, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, Attach. (filed April 17, 2024) (Hamilton April 17 *Ex Parte*); Letter from Zainab Alkebsi, NAD and AnnMarie Killian, TDIforAccess, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 1 (filed July 25, 2024) (NAD-TDI July 25 *Ex Parte*).

⁵⁷ See CaptionCall Reply Comments at 11-13 (discussing the role of CA-assisted IP CTS in maintaining service quality).

appears to be a substantial incentive for providers to limit the use of the CA-assisted mode, even where a consumer would prefer it.⁵⁸

22. *TRS Fund Stewardship Concerns.* The current single rate of \$1.30 per minute became effective July 1, 2021, when approximately 15% of IP CTS minutes were ASR-only.⁵⁹ As the volume of ASR-only service has increased, the average per-minute cost of IP CTS has declined, resulting in excessive compensation at the current single rate.⁶⁰ In 2023, compensation for ASR-only minutes produced an operating margin of \$0.70 per minute—116.7% above expenses.⁶¹ Moving ASR-only compensation closer to actual cost will conserve the TRS Fund and may decrease the potential incentive for a provider to engage in fraudulent practices.

23. *Need for Metrics.* Various parties argue that it would be better as a matter of policy and good governance for the Commission to establish service quality metrics before resetting IP CTS compensation rates.⁶² Progress has been made toward establishing metrics. In February 2023, the MITRE Corporation (MITRE), in its capacity as a Federally Funded Research and Development Center, formed a working group to develop a recommendation on metrics and measures for IP CTS service quality.⁶³ The working group, composed of community advocates, IP CTS providers, academia, and subject matter experts from related industries, was tasked by MITRE to: (1) identify and define measures that can be used to quantify and compare caption quality as it relates to effective communication; (2) propose methods for assessing IP CTS using these measures; and (3) identify potential criteria for establishing meaningful thresholds for acceptable caption quality.⁶⁴ The working group's report, completed June 5, 2024, includes six recommendations:⁶⁵

- Work with an American National Standards Institute (ANSI)-certified standards developer to initiate a process to formalize caption quality standards;
- Continue to refine measures and metrics as technology improves, while recognizing that no single measure reflects caption quality for all users, and that there is a distinction between what is feasible today and what is needed for full functional equivalence;
- Adopt a more transparent testing framework, as described in the report;
- Use the recommended testing framework to measure caption accuracy, caption delay, non-speech information, and punctuation and formatting;⁶⁶

⁵⁸ Once ASR-only service was introduced by most providers, it quickly became the most commonly used service mode—averaging 43.5% of compensable minutes in 2022, 74.6% in 2023, and a projected 84.5% in 2024. *Supra* Table 1; 2023 TRS Fund Report, Exh. 2. Although the percentage of ASR-only use is different for each provider, as of December 2023, average CA-assisted usage (as a percentage of total minutes) is substantially higher for providers that offer consumers a choice of service mode than for providers that unilaterally determine the service mode. *See* Updated Cost and Demand Reports (confidential).

⁵⁹ *See* Initial Cost and Demand Reports (confidential).

⁶⁰ *See* 2024 TRS Fund Report at 12.

⁶¹ *See supra* Table 1.

⁶² *See generally* Hamilton Comments at 2-4; Brattle Report at 13, para. 26; Ultratec Comments at 8-17; ClearCaptions Comments at 1; CaptionCall Comments at 7-8.

⁶³ MITRE, Telephone Caption Quality Measures and Metrics Working Group: Final Report (June 5, 2024) (Caption Quality Report); Letter from Michael Scott, CGB, to Marlene H. Dortch, FCC, CG Docket Nos. 13-24 and 03-123, Attach. (filed June 11, 2024) (filing a copy of the Caption Quality Report in the IP CTS metrics proceeding).

⁶⁴ Caption Quality Report at 1.

⁶⁵ *Id.* at 1-3. Except where indicated, there was unanimous consensus for the recommendations among working group members. *Id.*

⁶⁶ A majority of working group members supported this recommendation. *Id.* at 1, 2.

- Provide more transparency for research plans and results;⁶⁷
- Perform additional research to improve measures, identify appropriate metrics, and establish thresholds for acceptable caption quality.

24. By reaching consensus on a number of issues that had been the subject of dispute among commenters on the *Telephone Caption Metrics Notice*, the working group may have laid the foundation for ultimate adoption of caption quality metrics. However, it is unnecessary—and would not be appropriate—for us to defer the adoption of revised compensation formulas until metrics are in place. We need not resort to metrics to recognize that the current compensation rate for ASR-only service is unreasonably high. Continuing to support ASR-only IP CTS at this rate would be inconsistent with responsible stewardship of the TRS Fund.⁶⁸ In addition, as noted above, continuing to pay a single rate for IP CTS, regardless of the captioning mode, inherently encourages providers to increase or promote even more use of lower-cost ASR-only captioning, regardless of whether the quality is better or worse than higher-cost CA-assisted captioning.⁶⁹ Adopting bifurcated compensation rates will mitigate such incentives pending further information about the relative quality of the two service modes.

25. *Reliability of Cost Data.* In comments and *ex parte* submissions filed in 2023, several commenters argued that the cost and demand data then available—consisting of historical cost and demand for 2021 and 2022 and projected cost and demand for 2023 and 2024⁷⁰—were insufficiently reliable to support a revised compensation plan, and especially the application of different rates to ASR-only and CA-assisted IP CTS.⁷¹ For example, it was argued that historical cost and demand data for 2021 and 2022 were unreliable due to the impact of the COVID-19 pandemic on the demand for IP CTS and that there was insufficient experience with ASR-only service to enable the Commission to reliably estimate its cost.⁷² However, now that the record has been updated to include providers' cost and demand

⁶⁷ Two alternative recommendations for achieving greater transparency were identified, each with some support but less than a consensus. Under one approach, all research designs directly or indirectly funded by the Commission would be made available for public comment prior to approval, and research results would be made public no later than 6 months after completion of the research. Under a second approach, for which additional details need to be worked out, TRS quality testing methodologies and results would be made available for public comment in a timely manner, and results would be made public within an appropriate timeframe after delivery to the Commission. *Id.* at 2-3.

⁶⁸ One commenter's expert suggests that rate-setting should be delayed because "if quality metrics are defined in the near future, then the compliance cost of meeting these metrics are unknown today." Brattle Report at 13, para. 26. The Commission's exogenous cost recovery criteria provide a mechanism for recovery of such compliance costs in appropriate circumstances. *See infra* para. 87; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10886, para. 39.

⁶⁹ A number of commenters stress the importance of sustaining CA-assisted service. *See, e.g.*, AARO Comments at 4; Ultratec Comments at 11, 13; Hamilton Comments at 4; Hamilton April 17 *Ex Parte*; Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 1 (filed May 23, 2024) (CaptionCall May 23 *Ex Parte*); NAD-TDI July 25 *Ex Parte*.

⁷⁰ The TRS Fund administrator's estimates of average cost and demand for CA-assisted and ASR-only IP CTS, based on individual providers' reports (filed in February 2023) of historical and projected cost and demand for these calendar years, were filed May 1, 2023. 2023 TRS Fund Report, Exhs. 1-3, 1-3.a, 1-3.b.

⁷¹ Hamilton Comments at 3-4; Brattle Report at 3-4, para. 7; InnoCaption Comments at 2-3; ClearCaptions Comments at 16; CaptionMate Comments at 7; CaptionCall Comments at 17; *see* Hamilton Nov. 24 *Ex Parte* at 2 (asserting that the Commission should extend current rate through June 30, 2024, to ensure the Commission has appropriate, accurate cost data that has been audited); Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 22-408, 13-24, and 03-123, at 1-2 (filed Nov. 21, 2023) (CaptionCall Nov. 21 *Ex Parte*) (asserting that the Commission should wait to consider 2023 data to add another year's worth of historical cost data and allow for projections based on additional 12 months of experience).

⁷² *See* Brattle Report at 5-7, paras. 8-11; ClearCaptions Comments at 12; ClearCaptions Reply Comments at 6; Letter from Karen Peltz Strauss, Consultant to Ultratec, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, 13-24, at 2 (filed Nov. 15, 2023) (Ultratec Nov. 15 *Ex Parte*); Letter from David A. O'Connor, Counsel to
(continued....)

reported in February 2024, which includes historical cost and demand for 2022 and 2023 and projections for 2024 and 2025, these arguments for further delay are less applicable—as a number of commenters appear to acknowledge.⁷³

26. The current record also suggests that any pandemic-related effects on IP CTS demand and cost have almost entirely dissipated. It now appears that, by mid-2022, IP CTS demand had resumed approximately its historical trajectory.⁷⁴ As to the effects of the pandemic on labor cost,⁷⁵ in the case of IP CTS we find no persuasive evidence of any impact that would render the cost data for 2023 and 2024 unreliable. Unlike the supply of VRS CAs, which is inherently restricted due to the need for highly trained American Sign Language interpreters, the supply of CAs of the type needed by most IP CTS providers appears to be more elastic, and a lasting labor shortage less likely—especially given the shift to mostly ASR-only captioning.⁷⁶ The record—which shows that historical CA-assisted costs increased less than 3% from 2022 to 2023⁷⁷—appears to confirm that any unusual upward trend did not outlast the pandemic.

27. Regarding ASR-only IP CTS, as expected, an additional year of cost and demand data has significantly increased the confidence with which we can reasonably estimate the average per-minute cost of ASR-only service. The cost and demand data now available include at least 20 months of historical ASR-only data from every IP CTS provider offering service prior to January 2024.⁷⁸ This is substantially more than the 12 months of historical data the Commission ordinarily uses in setting rates.⁷⁹ And as noted above, delaying the establishment of a separate rate for ASR-only service will reinforce

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Hamilton, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, 13-24, at 2 (filed Nov. 7, 2023) (Hamilton Nov. 7 *Ex Parte*).

⁷³ See, e.g., Hamilton June 6 *Ex Parte* (recommending specific rates for ASR-only and CA-assisted); CaptionCall May 23 *Ex Parte* (same); ClearCaptions May 20 *Ex Parte*, Attach. at 9 (same).

⁷⁴ See 2024 TRS Fund Report, Exh. 1-3.a; cf. Brattle Report at 9, para. 18 n.33 (citing data in Rolka Loube’s May 2021 TRS Fund Report as evidence of the alleged unreliability of cost and demand data). In accordance with the Commission’s average-cost methodology, the most relevant cost data for setting IP CTS compensation are historical costs reported for calendar year 2023 and projected costs reported for calendar year 2024. See *infra* Part III.C.1.

⁷⁵ Brattle Report at 7-8, paras. 12-14; The Brattle Group, “IP CTS Costs and Reimbursement Rates: Reply Comments on FCC’s NPRM” at 6-8 (Apr. 3, 2023) (Attached to Hamilton Reply Comments) (Brattle Reply Report) (contending that the pandemic has had longer-lasting effects on labor costs—primarily CA wages).

⁷⁶ As discussed below, to address relevant inflation between 2022-23 and 2023-24, we apply an appropriate index to average cost for 2022 and 2023. For similar reasons, we find no persuasive evidence that, as the Brattle Report speculates, “an increase in the number of people working from home will result in an increase to these capital costs.” Brattle Report at 8-9, para. 15.

⁷⁷ See ASR-Only and CA-Assisted Cost and Demand Totals.

⁷⁸ See Updated Cost and Demand Reports (confidential); May 21 Cost and Demand Supplements (confidential); *supra* note 10 (identifying four new IP CTS providers conditionally certified in January 2024). As of January 2024, all five providers then offering IP CTS had been certified for at least 20 months to include ASR-only as a captioning option.

⁷⁹ See *infra* Part III.C.1. We also note that, because IP CTS compensation rates are set based on industry-wide averages, individual cost and demand variations are less important than they might have been if the Commission had found it necessary to set rates on a more individualized basis. Cf. Ultratec Nov. 15 *Ex Parte* at 1-3 (arguing that the cost data then available were skewed because different providers introduced ASR-only IP CTS at different times in 2021 and 2022, and because usage of ASR-only service continued to vary thereafter as providers and consumers experimented with the service options).

providers' incentive to decrease reliance on CAs, even where preferred by the consumer or needed for functionally equivalent service.⁸⁰

28. We acknowledge that additional experience with the ASR-only mode may further improve the Commission's ability to assess its effect on the cost of IP CTS. However, by taking account of current data, the compensation formulas herein will reflect the reasonable costs of each service mode more accurately than the current formula does. Adopting revised formulas also will substantially reduce the current waste of TRS Fund resources (as well as possible incentives for fraud and abuse) and reduce providers' incentive to inappropriately substitute ASR-only for CA-assisted service.⁸¹

2. Proposals for Additional Rate Categories

29. *Separate CA-Assisted Rate for CART-Based IP CTS.* We decline to adopt a separate CA-assisted rate for calls that are captioned using the Communications Access Realtime Translation (CART) method,⁸² as advocated by InnoCaption.⁸³ As discussed above, we find that setting separate rates for the broad categories of CA-assisted and ASR-only methods of providing IP CTS is justified by special considerations, as a limited deviation from the historical practice of applying the same compensation formula to all methods of providing a particular relay service.⁸⁴ However, except for the conditional rate supplement discussed further below,⁸⁵ we are unpersuaded that any analogous considerations warrant a *further* subdivision of the CA-assisted rate.

30. Although we recognize that the CART method may have certain benefits, the record at this time does not indicate that those benefits are so clear as to warrant giving special support for this approach over other methods of CA-assisted captioning, despite its acknowledged higher cost.⁸⁶ The evidence in the record regarding the particular advantages of the CART method is from 2020, and with recent improvements in ASR technology, providers have developed new methods of using ASR with CA-assisted captioning.⁸⁷ Thus, there are now several variants of CA-assisted captioning being used by IP CTS providers⁸⁸—as well as variations in the methods used by providers to determine which service

⁸⁰ By December 2023, ASR-only minutes increased to an average of 85% of total IP CTS minutes. *See* ASR-Only and CA-Assisted Cost and Demand Totals.

⁸¹ Hamilton's expert consultant states that setting a separate, lower rate for ASR-only service would discourage innovation in the provision of automatic forms of IP CTS. Brattle Report at 10, para. 20. However, no evidence is presented for this claim, and given the very substantial difference in reported costs for these services, a lower rate can be set for ASR-only without depriving providers of resources for innovative research and development.

⁸² We use the term *CART* in this context to refer to a captioning method whereby a professional stenographer produces captions without any assistance from ASR software. *See* InnoCaption Comments at 6.

⁸³ *See id.* at 6-10; InnoCaption June 6 *Ex Parte*; Letter from Cristina O. Duarte, InnoCaption, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 1 (filed Nov. 17, 2023) (InnoCaption Nov. 17 *Ex Parte*).

⁸⁴ *Supra* paras. 19-28.

⁸⁵ The conditional rate supplement we adopt for CA-assisted service is applicable to any qualifying provider of CA-assisted service, including providers using the CART method. *See infra* Part III.D.4.

⁸⁶ *See* InnoCaption Comments at 9; *InnoCaption Conditional Certification*, 29 FCC Red at 5107-08 (discussing higher cost of this method).

⁸⁷ *See, e.g.,* Hamilton Apr. 9, 2021 *Ex Parte* at 1 & Attach. (filed Apr. 9, 2021) (summarizing "important new research into the use of [ASR] in combination with [CAs] to significantly improve accuracy and minimize delay using [IP CTS]").

⁸⁸ In addition to the CART method and the revoicing method (in which a CA repeats the caller's speech into a microphone attached to an ASR program), there is a third variant of CA-assisted IP CTS, in which the initial caption is produced by applying ASR directly to the caller's speech (as in ASR-only IP CTS), and the resulting caption is then edited by a CA to correct any mistakes. *See supra* para. 9 & note 8.

mode should be applied to a call.⁸⁹ The current record does not provide definitive evidence as to whether testing of the methods in use today, using improved measurements,⁹⁰ would indicate a material, qualitative difference between InnoCaption's performance using the CART method and the performance of IP CTS providers using other methods of producing CA-assisted captions. Further, the efficacy of any particular captioning method is not determined solely by the technology used, but also by the resources and skill with which that technology may be implemented by a particular service provider. Given the statutory mandates for efficiency and technological neutrality,⁹¹ as well as the absence of definitive measurements of service quality, we find insufficient basis at this time for setting different compensation rates based on the specifics of each CA-assisted captioning method.

31. *Separate ASR-only Rates for Fully Automated and "Hybrid" Providers.* We also decline to adopt Brattle Group's recommendation that two different compensation rates be set for ASR-only minutes, based on whether the service provider (i) is fully automated, i.e., does not employ CAs for captioning *any* calls; or (ii) is a "hybrid" provider that uses CA-assisted methods for some calls and ASR-only for others.⁹² The concerns noted above regarding deviations from the Commission's historical practice are also applicable here. In addition, we note that, if we adopted Brattle Group's suggestion, the vast majority of ASR-only minutes would be compensated under the rate established for "hybrid" providers, which currently account for { [] } of projected ASR-only minutes.⁹³ For the same reason, an ASR-only rate based on the average ASR-only cost of the four "hybrid" providers would be similar to a cost-based ASR-only rate based on the ASR-only costs of all reporting providers.⁹⁴ While fully automatic providers would receive a much higher compensation rate for their ASR-only minutes, their higher per-minute costs are likely attributable primarily to the very low volume of minutes projected by fully automatic providers, given the economies of scale that appear to be involved in ASR-only captioning. Therefore, it is unlikely that differentiating ASR-only rates in this manner would succeed in accounting for any cost differential that may be inherent in a provider's choice of whether to use multiple captioning methods.⁹⁵

3. Classification of Calls

32. As proposed, the CA-assisted compensation formula shall apply to any call (or any call minutes, if a CA is not present for the entire call) to which a CA is dedicated, provided that the CA is actively engaged in the captioning process.⁹⁶ The applicability of the CA-assisted rate will not be affected by the specific nature of the active task(s) performed by the CA during such assignment (i.e., revoicing, typing the captions, or monitoring and correcting the output of an automatic speech recognition program). Commenters generally support this proposal.⁹⁷ We conclude that assigning a CA to monitor and correct

⁸⁹ See *supra* para. 9.

⁹⁰ As noted above, the process of developing metrics and measures for IP CTS service quality is not yet complete. See *supra* para. 23-24.

⁹¹ See 47 U.S.C. § 225(b)(1), (d)(2).

⁹² See Brattle Report at 14, paras. 28-29. Brattle also seems to suggest that a provider that uses CAs for every call should be subject to a different CA-assisted rate than the CA-assisted rate applicable to providers that do *not* provide CA assistance for every call. Brattle Report at 14, paras. 28, 29. Currently, no provider uses CAs for every call; therefore, it is not necessary to address this theoretical concern on the current record.

⁹³ Updated Cost and Demand Reports (confidential); May 21 Cost and Demand Supplements (confidential).

⁹⁴ See *infra* Table 2.

⁹⁵ See Brattle Report at 14, paras. 28-29.

⁹⁶ Notice, 37 FCC Rcd at 15246, paras. 21-23.

⁹⁷ See CaptionCall Comments at 29 ("[M]ethods of captioning that involve the full attention of a human CA incur the same labor costs as CA-based captioning" and should be reimbursed as such "even if ASR applied to the native audio is also used as part of the process of creating captions"); ClearCaptions Comments at 27 ("If a human CA is (continued....)

any errors in ASR-generated captions justifies compensation at the CA-assisted rate, provided that the CA is dedicated to these tasks from the beginning to the end of the call (or for the entire portion of the call that the provider designates as CA-assisted). However, the CA-assisted rate shall not apply if the CA is monitoring more than one call, or is splitting time between monitoring a call and attending to other tasks, or is only monitoring the captions, e.g., for research purposes, without actually correcting or supplementing the ASR-generated captions when necessary. In such a case, the employee's involvement is more in the nature of general supervision of ASR-only operations.

33. We are also sensitive to the potential risk that, given the substantial differential between the ASR-only and CA-assisted compensation rates adopted herein, an IP CTS provider might have an incentive to hire additional CAs or steer consumers to CA-assisted calls even if consumers would not benefit from such a mode of IP CTS.⁹⁸ For example, if such CAs work at home while receiving minimal training and supervision, the incremental per-minute cost (for a low-cost provider) of additional CA-assisted minutes might be less than the rate differential under our bifurcated compensation plan. Therefore, we delegate authority to the Consumer and Governmental Affairs Bureau, in coordination with the Office of the Managing Director, to work with the TRS Fund administrator to ensure that annual cost reports include information that will enable the Commission to determine the reasonableness of IP CTS providers' practices related to hiring, training, and supervising CAs and to prevent waste of TRS Fund resources.

34. In addition, the Commission reserves the right to revisit and revise the compensation formulas for CA-assisted and ASR-only IP CTS prior to the end of the compensation period, if it concludes that such intervention is called for to achieve statutory objectives. For example, if evidence suggests that CAs are being added to calls primarily to gain the higher compensation rate, without significantly increasing the accuracy of the captions, then—in addition to taking other appropriate measures—the Commission may revise the compensation formulas to correct providers' incentives and mitigate the risk of waste, fraud, and abuse.

B. Allowable Costs

35. As proposed in the *Notice*,⁹⁹ we expand the criteria for IP CTS cost recovery for research and development (R&D), numbering, and user access software, harmonizing them with the VRS cost criteria adopted in the *2023 VRS Compensation Order*.¹⁰⁰ We decline to revisit the longstanding Commission policy that the TRS Fund does not support the cost of providing, installing, or maintaining customer premises equipment.¹⁰¹

1. Research and Development

36. We revise our allowable cost criteria to allow TRS Fund support for the reasonable cost of research and development to enhance the functional equivalence of IP CTS, including improvements in service quality that may exceed the Commission's mandatory minimum TRS standards. Numerous

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monitoring a call, there is labor involved, which is equivalent to a CA providing captions and the call should be compensated under the CA-assisted rate").

⁹⁸ See Letter from Scott D. Delacourt, Counsel to CaptionMate, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 5 (filed Nov. 30, 2023) (CaptionMate Nov. 30 *Ex Parte*) (asserting that "if rates are bifurcated, the incentives change so that an operator of both CA service and ASR service may assign calls to maximize their revenues (for example, by assigning as many calls as possible to CAs) or their profits (for example, by assigning calls to CAs whenever there is spare capacity regardless of need)").

⁹⁹ *Notice*, 37 FCC Rcd at 15252-56, paras. 27-35.

¹⁰⁰ See *2023 VRS Compensation Order*, paras. 30-38, 44-47.

¹⁰¹ *Notice*, 37 FCC Rcd at 15255, para. 33.

commenters support and no commenter opposes this change.¹⁰² As in the case of VRS, and for similar reasons, we find that the current criterion—allowing cost recovery only for R&D conducted to ensure that a provider’s service meets the minimum TRS standards—is unnecessarily restrictive.¹⁰³ Authorizing providers (as well as Commission-directed entities) to conduct additional research is consistent with the statutory mandate to encourage the use of improved technology for TRS¹⁰⁴ and with the Commission’s policy of authorizing multiple IP CTS providers to compete with one another based on service quality.¹⁰⁵ Such competition logically may lead IP CTS providers to conduct research and development on innovative methods of producing and delivering captions, resulting in improved service quality that may exceed the level required by our minimum standards.¹⁰⁶ We also find support for this change in commenters’ recent submissions emphasizing the need to ensure that the compensation plan supports research and development to improve IP CTS.¹⁰⁷ To establish consistent allowable-cost criteria for all three forms of IP-based TRS, we conclude that the expanded allowability of reasonable research and development costs shall also apply to IP Relay.¹⁰⁸

37. In the *Notice*, we also sought comment on whether to adopt measures to prevent waste and ensure that the benefit of the conducted research and development actually enhances functional equivalence.¹⁰⁹ However, we also noted that by using an average cost methodology and setting compensation formulas for multi-year periods, the Commission can provide substantial incentives for providers to use research and development funds wisely and avoid incurring unnecessary costs.¹¹⁰ We continue to believe that the above incentive structure is a robust safeguard against waste, and we agree with commenters that additional safeguards, such as the additional reporting required in the *2023 VRS Compensation Order*,¹¹¹ are not necessary at this time.¹¹² We stress that, as with all provider-reported expenses, expenses for research and development to improve IP CTS are allowable only if “reasonable.” In addition, expenses incurred to develop proprietary user devices and software (or any non-TRS product or service) are not recoverable from the TRS Fund.¹¹³

¹⁰² See, e.g., Hamilton Comments at 16; CaptionMate Comments at 3; Ultratec Comments at 20.

¹⁰³ *2023 VRS Compensation Order*, para. 32.

¹⁰⁴ See 47 U.S.C. § 225(d)(2).

¹⁰⁵ *Notice*, 37 FCC Rcd at 15252, para. 28 (citing *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10884-85, para. 35).

¹⁰⁶ Cf. *2023 VRS Compensation Order*, para. 32.

¹⁰⁷ See CaptionCall July 1 *Ex Parte* at 5; ClearCaptions July 18 *Ex Parte*, Attach. A at 7; NAD-TDI July 25 *Ex Parte* at 2.

¹⁰⁸ See *2022 IP Relay Compensation Order*, 37 FCC Rcd at 8019, para. 26 (deferring resolution of this issue with respect to IP Relay).

¹⁰⁹ *Notice*, 37 FCC Rcd 15253, para. 30.

¹¹⁰ *Id.*

¹¹¹ *2023 VRS Compensation Order*, paras. 124-26.

¹¹² See Hamilton Comments at 16 (noting that “there are sufficiently robust enforcement measures in place currently, including the Commission’s authority to audit providers’ costs”); ClearCaptions Comments at 28 (explaining that “IP CTS Providers are already required to report research and development in their annual Relay Services Data Request (“RSDR”) cost filing.”); cf. *2023 VRS Compensation Order*, para. 124 (noting that estimated VRS costs exceed historical levels by 27% and directing, *inter alia*, that specific information be collected on VRS providers’ R&D spending to “enable the Commission to review whether the increased compensation authorized herein is having the intended results of enabling service improvements that enhance functional equivalence”).

¹¹³ See *2023 VRS Compensation Order*, para. 34; *infra* para. 46.

2. Numbering

38. As also proposed in the *Notice*, we treat as allowable the reasonable costs of acquiring North American Numbering Plan (NANP) telephone numbers for IP CTS users, in those circumstances where assignment of a telephone number is necessary to provide the service.¹¹⁴ In a 2008 ruling, the Commission determined that such costs would not be supported by the TRS Fund,¹¹⁵ reasoning that they are not attributable to the use of relay service and that analogous costs incurred by voice service providers are typically passed through to their customers.¹¹⁶ Recently, however, the Commission revisited this issue with respect to IP Relay and VRS, concluding that the reasonable cost of assigning and porting NANP numbers for those services should be supported by the TRS Fund. Recognizing that our rules require the assignment of NANP numbers to IP Relay and VRS users and that, based on the current record, numbering costs are unlikely to be recoverable from users as a practical matter, the Commission concluded that such costs are now appropriately attributed to the use of relay to facilitate a call.¹¹⁷

39. While the most common IP CTS configuration allows consumers to use existing telephone numbers to place and receive calls over a landline voice service,¹¹⁸ assignment of a new number may be necessary as a practical matter for some configurations of IP CTS—for example, where an over-the-top application enables captioning of calls placed and received on smartphones and other devices.¹¹⁹ In such cases, as is true for VRS and IP Relay, the IP CTS provider typically does not have a billing relationship with the consumer, and there seems to be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge for any particular IP CTS user.¹²⁰

40. Therefore, we revise our allowable-cost criteria for IP CTS to allow TRS Fund support of an IP CTS provider's reasonable costs of acquiring NANP telephone numbers when necessary to provide the service.¹²¹ We stress that the cost of number assignment is allowable only where such number assignment is necessary for the provision of IP CTS in a particular configuration. As noted above, most

¹¹⁴ *Notice*, 37 FCC Rcd at 15253-54, para. 31. Several commenters support this change (see CaptionCall Comments at 36; CaptionMate Comments at 1), and no party opposes it.

¹¹⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 812-16, paras. 46-54 (2008).

¹¹⁶ *Id.*

¹¹⁷ See 2022 *IP Relay Compensation Order*, 37 FCC Rcd at 8019, para. 25; 2023 *VRS Compensation Order*, paras. 36-38.

¹¹⁸ See, e.g., CaptionCall Comments at 34-36, 38-41; ClearCaptions Comments at 9-11, 19-24. IP CTS is typically provided as an adjunct to a subscriber's existing telephone service. That is, the user obtains a device with a screen display and connects it to the existing telephone service and number. See *Notice*, 37 FCC Rcd at 15253-54, para. 31 & n.70.

¹¹⁹ In such instances, the provider may assign a new NANP number to the user, which is different from the user's landline or mobile number. The new number may be used, for example, to enable incoming calls (including 911 callbacks) to be received via the captioning app on a smartphone, rather than the phone's native telephony application. See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 691, 711-12, 714, paras. 44, 49 (2019) (2019 *IP CTS 911 Waiver Order*) (waiving certain IP CTS call handling rules where IP CTS providers assign users NANP telephone numbers that can be used to deliver a callback number to a PSAP).

¹²⁰ See 2022 *IP Relay Compensation Order*, 37 FCC Rcd at 8019, para. 25.

¹²¹ As noted in the text, not every IP CTS subscriber will require assignment of a NANP number from the IP CTS provider.

IP CTS users receive captioning on a landline phone, in a configuration that does not require the assignment of a new telephone number. As with other reported costs, if audits or other review reveals that numbering costs are being reported in excess of reasonable amounts, the excess will be disallowed.

41. As in the *2023 VRS Compensation Order*, we also clarify that, to the extent IP CTS providers are responsible for delivery of a user's 911 call to the nearest Public Safety Answering Point (PSAP), the TRS Fund supports reasonable expenses to connect the 911 call quickly and to automatically provide location data to the PSAP.¹²²

3. Customer Premises Equipment

42. Our rules do not prohibit IP CTS providers or their partners from distributing customer premises equipment (CPE) to IP CTS users. However, the TRS Fund does not support the provision of CPE to TRS users,¹²³ except where Congress has specifically authorized such support.¹²⁴ The *Notice* did not re-open or seek comment on this issue.¹²⁵ Nonetheless, a number of commenters urge the Commission to revisit whether the TRS Fund should support the provision of CPE to IP CTS users.¹²⁶ Because this question does not fall within the scope of the *Notice*, it is not necessary for the Commission to address those comments in this *Report and Order*.

¹²² See *2023 VRS Compensation Order*, para. 38.

¹²³ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10873, para. 18 (adhering, for purposes of IP CTS compensation, to “well-settled rulings on the allowability of specific categories of TRS costs, including, e.g., disallowance of costs attributable to . . . the provision and maintenance of end-user devices”); *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5820, para. 34 (rejecting argument that the TRS Fund should support costs incurred to provide equipment to IP CTS users); *2017 VRS Compensation Order*, 32 FCC Rcd at 5897-901, paras. 12-19 (rejecting various arguments for permitting TRS Fund support for the provision of CPE to VRS users); *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 Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8696-97, paras. 193-94 (2013) (*2013 VRS Reform Order*) (declining to revisit, in the VRS context, the prohibition of TRS support for CPE); *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20171, para. 82 (reaffirming that “costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the Fund”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006) (ruling that, because “compensable expenses must be the providers’ expenses in making the service available and not the customer’s costs of receiving the service,” they do not include expenses for CPE). Such exclusions have been upheld repeatedly on judicial review. See *Sorenson Communications v. FCC*, 659 F.3d 1035, 1046-47 (10th Cir. 2011) (*Sorenson 2011*); *Sorenson Communications v. FCC*, 765 F.3d 37, 44-45 (D.C. Cir. 2014) (*Sorenson 2014*).

¹²⁴ See 47 U.S.C. § 620 (specifically authorizing TRS Fund support for the provision of CPE for people who are deafblind, subject to an annual \$10 million limit).

¹²⁵ In the *Notice*, the Commission noted that “[p]ursuant to longstanding Commission rulings, twice upheld by the D.C. Circuit, the TRS Fund does not support the provision of the equipment used by a consumer to access TRS,” *Notice*, 37 FCC Rcd at 15254-55, para. 32, and expressly stated that it was “not proposing to include the costs of providing any devices to users, just the costs of developing and providing software that is necessary to provide IP CTS on off-the-shelf devices.” *Id.* at 15255, para. 33.

¹²⁶ See ClearCaptions Comments at 9-11, 19-22 (arguing that “purpose-built” CPE is needed by most IP CTS users, due to their age and inability to use smartphone applications, and is not commercially available); Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 1-6 (filed July 17, 2023) (ClearCaptions July 17 *Ex Parte*); see also CaptionCall Comments at 13-15, 34-36; Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 3 (filed Oct. 19, 2023) (CaptionCall Oct. 19 *Ex Parte*) (asserting that “the current IP CTS population is highly likely to need caption-capable telephones in order to use the service”); Letter from David A. O’Connor, Counsel to Hamilton, to Marlene H. Dortch, FCC, at 3 (filed Oct. 25, 2023) (Hamilton Oct. 25 *Ex Parte*).

43. Further, even if those comments could be construed as within the scope of the *Notice*, for the reasons articulated in our prior orders,¹²⁷ commenters provide no persuasive reason to revisit the issue on its merits. The Commission long ago decided that costs attributable to equipment that a TRS provider distributes to a consumer, including installation, maintenance, and testing, are not compensable from the TRS Fund.¹²⁸ The well-established distinction in our rules between relay services, which are supported by the TRS Fund, and end user devices, which are not, is grounded in the text of the governing statutory provision. As the Commission has explained, “Section 225 focuses on the provision of relay service,” requiring common carriers to provide relay *services* either directly or indirectly (e.g., through a TRS Fund-supported provider), and “this is apparent from the plain language of Section 225, which is directed at ‘services’ that carriers must offer in their service areas that enable communication between persons who use a TTY or other non-voice terminal device and an individual who does not use such device.”¹²⁹ The Commission has further held that “[c]osts associated with CPE are not part of a provider’s expenses in making relay *services* available; rather they must be incurred by consumers to receive these services,” just as people who do not use relay services must purchase their phones.¹³⁰ The Commission’s determinations disallowing CPE costs have been upheld by federal courts of appeals.¹³¹

44. We also note that, contrary to ClearCaptions’ argument,¹³² a mere analogy between section 225 and certain provisions in section 254 of the Act carries no legal weight. TRS support is governed by section 225, not section 254, and we reject the suggestion that somehow our authority under the former provision can be expanded based on a purported analogy to how the Commission has exercised its authority under the latter provision.

45. In addition, even if the Commission had statutory authority to do so, we are unconvinced that TRS Fund support for provider distribution of user devices—in particular, purpose-built, proprietary equipment¹³³—would be necessary or appropriate to ensure the availability of functionally equivalent relay service. Authorizing TRS Fund support for the kinds of user devices currently offered by providers—i.e., relatively expensive, proprietary equipment that can only be used with one provider’s

¹²⁷ See *supra* note 123.

¹²⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5457-58, para. 38 (2006) (2006 Declaratory Ruling).

¹²⁹ See *id.* at 5457-58, para. 38 & n.129 (citing 47 U.S.C. § 225(c) (“Each common carrier providing telephone voice transmission services shall . . . provide . . . telecommunications relay *services*, individually, through designees, through a competitively selected vendor, or in concert with other carriers.”) (emphasis added). By contrast, a separate provision of the Act *permits, but does not require* carriers to provide specialized CPE for people with disabilities. See 47 U.S.C. § 610(g) (“Any common carrier or connecting carrier *may* provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.”) (emphasis added); *cf.* ClearCaptions July 17 *Ex Parte* at 6-7 (quoting the legislative history of this provision and contending that “[s]ection 225 embodies this obligation”).

¹³⁰ 2017 *VRS Compensation Order*, 32 FCC Rcd at 5897, para. 12.

¹³¹ *Sorenson 2011*, 659 F.3d at 1044-45 (statute does not require that “VRS users receive free equipment and training,” only that they “pay no higher rates for calls than others pay for traditional phone services,” and exclusion of CPE costs does not undermine section 225 goal of not discouraging or impairing development of improved technology); *Sorenson 2014*, 765 F.3d at 44.

¹³² See ClearCaptions July 17 *Ex Parte* at 9-11 (citing 47 U.S.C. § 254(h)).

¹³³ See ClearCaptions Comments at 9-11, 19-22.

service and that has an unusually short useful life¹³⁴—appears inconsistent with the Commission’s mandate to make TRS available in the most efficient manner.¹³⁵

46. The record is clear that IP CTS can be accessed without proprietary equipment, by downloading providers’ software applications to smartphones, tablets, and laptops.¹³⁶ Although ClearCaptions argues that such applications are generally impractical for seniors (who comprise the bulk of IP CTS users),¹³⁷ a survey cited by ClearCaptions indicates that smartphone ownership is growing faster among seniors than other age groups, and that as of 2021, 61% of seniors owned smartphones—a percentage that presumably will continue to increase.¹³⁸ In addition, as discussed in Parts III.C.4 and 5 below, reasonable expenses incurred in helping seniors download and use a provider’s smartphone application are allowable costs supported by the TRS Fund. Finally, even for those consumers who are unable to use smartphone or other software applications to access IP CTS, it appears that—despite ClearCaptions’ claim¹³⁹—screen-equipped wireline telephones, usable for captioned phone calls (or screens that can be connected to a wireline telephone) are commercially available for home use.¹⁴⁰

4. User Access Software

47. We adopt our proposal to allow TRS Fund support for the reasonable cost of developing, maintaining, and providing software and web-based applications that enable users to access IP CTS from off-the-shelf user devices, such as mobile phones, desktop computers, and laptops running on widely available operating systems.¹⁴¹ Several commenters support—and none opposes—this change, which

¹³⁴ See Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, Attach. at 5 (filed Sept. 21, 2023) (ClearCaptions Sept. 21 *Ex Parte*) (noting churn rate among customers due to age).

¹³⁵ In the VRS context, the Commission has adopted policies to encourage the use of non-proprietary, off-the-shelf, screen-equipped devices, such as smartphones, laptops, and personal computers, to access VRS. See 2023 *VRS Compensation Order*, para. 46. In general, the use of non-proprietary devices for TRS (e.g., by downloading software applications developed by providers) has several advantages. First, it is less costly, as most people in the United States already own such devices and use them for a wide variety of purposes other than TRS. Second, the use of non-proprietary devices avoids “locking in” users to the service of a single TRS provider, which limits consumer choice and which also can encourage the offering of free devices as an inducement to use a particular provider’s relay service. Third, the use of non-proprietary devices avoids “siloing” TRS users in ways that can hinder access to communication technologies available to mainstream users. See, e.g., *Notice*, 37 FCC Rcd at 15255, para. 33; 2017 *VRS Improvements Order*, 32 FCC Rcd at 5900-01, para. 18.

¹³⁶ For example, CaptionCall, CaptionMate, Hamilton Relay, and InnoCaption all make their applications available on Google Play and the Apple App Store, while ClearCaptions’ application is currently available on the Apple App Store and is scheduled to be available on Android devices. See, e.g., https://play.google.com/store/search?q=caption%20calls&c=apps&hl=en_US (last visited July 30, 2024); <https://www.apple.com/us/search/caption-calls?src=globalnav> (last visited July 30, 2024); <https://clearcaptions.com/how-it-works/mobile-app/> (last visited July 30, 2024). Applications from recently certified IP CTS providers are also available for both operating systems.

¹³⁷ ClearCaptions July 17 *Ex Parte* at 3-4 (explaining that smartphone ownership is lower for seniors than for other age groups and that software applications “are confusing and difficult to use for the average senior”); see also CaptionCall May 23 *Ex Parte* at 5.

¹³⁸ Michelle Faverio, “Share of those over 65 and older who are tech users has grown in the past decade,” Pew Research Center (Jan. 13, 2022), <https://www.pewresearch.org/short-reads/2022/01/13/share-of-those-65-and-older-who-are-tech-users-has-grown-in-the-past-decade/>.

¹³⁹ ClearCaptions July 17 *Ex Parte* at 5.

¹⁴⁰ See, e.g., Teltex, <https://teltex.com/teltex-glt-w-v2t-10/> (last visited July 30, 2024) (offering the Teltex GLT Captioning Tablet “for your corded home or business phones,” using Google’s Live Transcribe service); <https://teltex.com/clarity-xlc8-glt-vco/> (last visited July 30, 2024) (offering a cordless amplified phone with the Teltex GLT Captioning Tablet).

¹⁴¹ *Notice*, 37 FCC Rcd at 15255, paras. 33-34.

harmonizes the cost criteria for IP CTS with those adopted for VRS.¹⁴² As with VRS, such costs must be incurred by an IP CTS provider to enable users to connect to its service platform; therefore, they are attributable to the provision of IP CTS. Further, recovery of such costs is consistent with our efficiency mandate, as it supports the use of off-the-shelf IP-enabled user devices to access TRS and decreases consumers' dependence on TRS equipment specifically designed for connection to a particular TRS provider.¹⁴³

48. Consistent with our compensation ruling for VRS and Part III.B.3 above, we decline some commenters' requests to allow TRS Fund support for the cost of user access software needed for proprietary user equipment supplied by the provider or a third party.¹⁴⁴ As we explain above and in the *2023 VRS Compensation Order*, while TRS users need a software interface to access TRS, they do not "need" proprietary devices that can be connected to and used with only one provider's service, nor do they need software designed for such devices. Although we do not prohibit providers from distributing such devices and software to consumers requesting them, it is not necessary to support proprietary devices and software with TRS Fund resources. Further, allowing recovery of such software costs would not advance the Commission's policy to enable users to access TRS from off-the-shelf IP-enabled devices and to avoid dependence on TRS equipment specifically designed for a particular provider's network.¹⁴⁵ If an IP CTS provider supplies user access software for both off-the-shelf and proprietary devices, and the development costs for each type of software cannot be directly assigned, a provider may adopt a reasonable allocation method to separate such costs, to ensure that it does not seek recovery for costs associated with proprietary devices. The provider shall specify the method used in its cost reports, so that it can be evaluated by the TRS Fund administrator and the Commission.¹⁴⁶

5. Field Staff Visits

49. While the *Notice* did not seek comment on the issue of whether providers should be able to recover the costs associated with deploying their field staff, the issue was raised by commenters.¹⁴⁷ We find that the Commission's ruling in the *2023 VRS Compensation Order* sufficiently addresses the issues raised in the comments regarding the treatment of costs incurred by IP CTS providers' field staff. In the *2023 VRS Compensation Order*, responding to Sorenson's petition, the Commission reaffirmed that, because the costs of installing, maintaining, and training customers to use provider-distributed devices (or software for proprietary provider-distributed devices) are not recoverable through TRS Fund compensation, expenses for field staff visits for such purposes are not allowable expenses for VRS or IP CTS.¹⁴⁸ In addition, the Commission clarified that the reasonable cost of *service*-related work performed by field staff during a visit to a new or current user (e.g., to assist customers with registration, use of the service on a non-proprietary device, or completing a port) is an allowable cost of providing VRS or IP CTS.¹⁴⁹

¹⁴² *2023 VRS Compensation Order*, para. 45; see CaptionCall Comments at 29-34 (supporting proposal and seeking to extend to proprietary devices); ClearCaptions Comments at 25-26 (same); Hamilton Comments at 16-17 (same).

¹⁴³ Cf. *2023 VRS Compensation Order*, para. 45.

¹⁴⁴ See ClearCaptions Comments at 26; CaptionCall Comments at 34; *2023 VRS Compensation Order*, para. 46.

¹⁴⁵ *2023 VRS Compensation Order*, para. 46.

¹⁴⁶ See *id.*, para. 47.

¹⁴⁷ See, e.g., CaptionCall Comments at 35-36; ClearCaptions Comments at 25; Hamilton Reply Comments at 9-10.

¹⁴⁸ *2023 VRS Compensation Order*, paras. 49-50.

¹⁴⁹ *Id.*, para. 49.

C. Determination of Cost-Based Rates

1. Cost Averaging

50. The Commission has broad discretion in choosing compensation methodologies and setting compensation rates within the parameters established by section 225 of the Act.¹⁵⁰ To set cost-based benchmarks for IP CTS compensation rates, we continue to rely on the methodology used in the *2020 IP CTS Compensation Order*, in which rates were set based on the weighted average of each provider's projected and historical costs for the current and immediately preceding calendar years (now 2023 and 2024).¹⁵¹ We maintain this approach for essentially the same reasons cited in the *2020 IP CTS Compensation Order*. *First*, this methodology has produced consistent and reliable results without imposing undue administrative burdens on either IP CTS providers or the Commission. *Second*, average-cost-based compensation, especially when applied for more than one year, provides substantial incentives and opportunities for individual TRS providers to increase their efficiency and capture the resulting profits. *Third*, maintaining a consistent compensation methodology provides a measure of transitional stability at a time of technological change.¹⁵²

51. Some commenters object to setting rates based on an average of provider costs. According to Hamilton's expert, the Brattle Group, averaging is inappropriate for IP CTS because "IP CTS costs do not appear to follow a normal distribution, which typically would mean a few providers with very high costs, a few providers with low costs, and a majority of providers with costs somewhere in the middle of a bell curve."¹⁵³ However, the Brattle Group cites no authority for the claim that cost-averaging is only appropriate when provider costs are in a bell-curve shaped distribution—which is unlikely to occur where, as here, the sample size is limited to nine providers, five of which are very small or start-ups. We are also unpersuaded that there is justification for replacing our average-cost approach with a "mean plus one standard deviation" approach, as advocated by Hamilton.¹⁵⁴ Setting a CA-assisted rate based on this approach would overcompensate providers with average costs and substantially dilute the incentive for higher-cost providers to become more efficient.

52. *Tiered or Small-Provider Rates.* CaptionMate urges the Commission to adopt a tiered rate structure for IP CTS, or alternatively a separate rate for small providers, contending that supporting smaller providers with relatively high per-minute costs would offer consumers more choice and promote

¹⁵⁰ See *2019 IP CTS Contributions Order*, 34 FCC Red at 11270, para. 13 (detailing the Commission's broad authority under section 225 to establish regulations, including cost recovery); see also *Sorenson Communications v. FCC*, 897 F.3d 214, 223 (D.C. Cir. 2018) (*Sorenson 2018*) (courts are particularly deferential in reviewing ratemaking orders because agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise); *id.* at 227-28 (in carrying out section 225, Congress instructed the FCC to balance several different factors without instructing the FCC how to prioritize the various factors).

¹⁵¹ Under this weighted-average method, the allowable expenses reported by all CA-based and ASR-based IP CTS providers respectively for calendar years 2023 (historical expense) and 2024 (projected expenses) are totaled and the allowed operating margin (determined as a percentage of expenses) is added to total allowable expenses. The resulting total is divided by total historical (for 2023) and projected (2024) compensable minutes of demand for CA-based and ASR-based IP CTS respectively for those two calendar years, to yield an average cost per minute (including operating margin). This average cost per minute is called a "weighted" average because it gives more weight to the per-minute cost incurred by providers with relatively high demand and less weight to the per-minute cost incurred by providers with relatively low demand.

¹⁵² *2020 IP CTS Compensation Order*, 35 FCC Red at 10872, paras. 14-16; see also *2018 IP CTS Compensation Order*, 33 FCC Red at 5813-14, para. 23.

¹⁵³ Brattle Report at 18-19, para. 38. Brattle Group also asserts that averaging is only appropriate if all relevant costs have been accounted for. *Id.* The question of which costs are relevant or allowable is addressed above. See *supra* Part III.B.

¹⁵⁴ Hamilton June 6 *Ex Parte* at 2.

innovation.¹⁵⁵ As the Commission explained in the *2020 IP CTS Compensation Order*, it adopted tiered rates for VRS due to a combination of specific circumstances that were threatening the viability of competition among VRS providers.¹⁵⁶ The Commission declined to adopt tiered rates for IP CTS because it was “not persuaded that similar or equally compelling factors are present in the IP CTS market to an extent that would justify introducing the complexities and potential inefficiencies of a tiered rate structure or an emergent provider rate.”¹⁵⁷ This remains the case today. *First*, unlike in VRS, the IP CTS market has not been dominated for a long period by a single provider. The market share of the largest IP CTS provider is not comparable to that of the largest provider in the VRS market.¹⁵⁸ *Second*, while there are economies of scale in IP CTS, there is little evidence that such economies of scale are preventing the emergence of efficient competitors.¹⁵⁹ IP CTS’s record of growth suggests that there are substantially greater opportunities than in the VRS context for a provider to reach efficient scale within a relatively short period of time. *Third*, unlike VRS, IP CTS is not dependent on interoperability and does not have other network effects that make it difficult for new entities to enter the market or obtain eligible IP CTS users as customers. *Fourth*, the relatively recent introduction of ASR-only IP CTS, as well as new methods of providing CA-assisted IP CTS,¹⁶⁰ provide additional evidence that Commission policies are not deterring innovation in this arena. *Fifth*, the four recently granted applications for IP CTS certification indicate that new entrants believe that additional competitors can succeed and innovate in the provision of IP CTS.¹⁶¹ In summary, given the relative ease of new entry and the presence of vigorous competition based on service quality, we conclude that the goals of offering consumer choice and

¹⁵⁵ CaptionMate Comments at 8; Letter from Scott D. Delacourt, Counsel to CaptionMate, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed May 14, 2024) (CaptionMate May 14 *Ex Parte*) (contending that the FCC should set a small-provider rate for IP CTS); CaptionMate Nov. 30 *Ex Parte* at 4 (asking the Commission to further develop the record on an emergent-provider rate for small IP CTS providers); *see also* Letter from CaptionMate, Global Caption, Nagish, NexTalk, and Rogervoice, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed May 31, 2024) (Small Providers May 31 Joint *Ex Parte*) (urging the Commission to adopt an Emergent Rate); *but see* CaptionCall Reply at 27-29 (opposing tiered rates because there is a competitive market, and tiered rates discourage efficiency, while creating a perverse incentive to maintain a low volume of minutes).

¹⁵⁶ *See 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10888-89, para. 43.

¹⁵⁷ *See id.*; *see also* CaptionCall June 3 *Ex Parte* at 3 (except for VRS, “in no other setting would it be contemplated that an entrant could obtain a uniquely high price based solely on small market share”).

¹⁵⁸ In IP CTS, in 2023, the largest provider served {[]} of the total minutes and there were {[]} providers with at least a {[]} share. *See* Updated Cost and Demand Reports (confidential); May 21 Cost and Demand Supplements (confidential). By contrast, the Commission found tiering was justified for VRS when, among other things, the largest provider served about {[]} of the minutes and its two principal competitors served only {[]} each. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5906, para. 29; Hamilton June 6 *Ex Parte*, Attach. at 2 (emergent rate unnecessary because there is no dominant IP CTS provider as there is for VRS). More recently, after the completed merger of the second and third largest VRS competitors and major improvements in that competitor’s efficiency, the Commission found that those changes raised significant concerns about the continuing validity of the justification for tiering. *2023 VRS Compensation Order*, paras. 88-92 (finding it would be premature to abandon tiering but modifying the tiered rate structure to reduce unnecessary inefficiency or inequity in the allocation of TRS Fund resources).

¹⁵⁹ As noted in the *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10889, para. 45, where higher costs are incurred by a relatively large IP CTS provider, it is more likely attributable to business decisions concerning use of contractors as turnkey service providers, prior investments in technology and business processes, and differences in business models, rather than issues of scale.

¹⁶⁰ *See, e.g.*, Hamilton Apr. 9, 2021 *Ex Parte*.

¹⁶¹ *See supra* note 10.

encouraging innovation can continue to be achieved without resorting to the ratemaking challenges, complexities, and potential inefficiencies of a tiered rate structure or a separate small-provider rate.¹⁶²

53. We also emphasize that the Commission is mandated to make TRS available in the most efficient manner, not to ensure that every TRS provider is able to operate successfully, regardless of the cost.¹⁶³ CaptionMate claims that, as a small provider, it offers a service of unique value, targeting a younger demographic and offering captioning in 67 languages.¹⁶⁴ However, the Commission must balance the potential benefits of diverse service offerings with the need for efficiency. To the extent that there is significant demand for multiple-language captioning, the record does not show that it cannot be made available by a provider supported by the TRS Fund at the rates set herein, or through other channels.¹⁶⁵ We also note that the compensation plan adopted herein, which limits the cumulative reduction in the ASR-only compensation rate during the five-year compensation period, allows all providers of ASR-only service to be compensated at a level higher than the current average cost. Thus, small ASR-only providers will also be afforded a period of stability to support their growth under relatively favorable conditions.

2. Estimating IP CTS Expenses

54. *Attribution of Expenses to Service Categories.* We adopt the *Notice*'s tentative conclusion that, when possible, providers must directly assign costs to either ASR-only or CA-assisted IP CTS, and when that is not possible, they must reasonably allocate such costs based on direct analysis of the origin of the costs.¹⁶⁶ Where they could not directly attribute costs to one or another service, most providers have allocated joint expenses based on the share of their IP CTS minutes that are ASR-only or CA-assisted. We find this to be a reasonable method.¹⁶⁷

55. *Relevant Cost Data.* Since 2018, the Commission has established the cost basis for IP CTS provider compensation by averaging providers' reported historical expenses for the prior calendar

¹⁶² We also note that none of the IP CTS providers advocating a special small-provider rate offers CA-assisted service. Advocates for accessibility contend that the TRS Fund should not support the provision of IP CTS by providers that do not allow users to select CA-assisted service. TDIforAccess, Inc., et al., Petition for Rulemaking to Require Option for Communications Assistants by Stand-Alone Automatic Captioning Providers, CG Docket Nos. 13-24 and 03-123 (filed May 31, 2024). While we do not prejudge this recently filed petition, the fact that none of the providers subject to the proposed small-provider rate offers a CA-assisted option reinforces our conclusion that the objectives of section 225 would not be served by adopting such a rate.

¹⁶³ Cf. CaptionMate Nov. 30 *Ex Parte* at 2 (urging the Commission to "give new, small providers the same chance to establish a foothold in the IP CTS industry that the existing dominant players had back in 2017-2018"); *id.* at 3 (asking the Commission "to ensure that small providers have a full and fair opportunity to reach out to the capital markets, establish their business, and compete with the larger incumbents"); *see also* Small Providers May 31 Joint *Ex Parte*).

¹⁶⁴ CaptionMate Nov. 30 *Ex Parte* at 1. As of May 22, 2024, CaptionMate's app was only available in English and Spanish, although there were plans for a roll-out of Vietnamese and Chinese versions. *See* CaptionMate May 22 *Ex Parte* at 1.

¹⁶⁵ *See, e.g.*, <https://support.google.com/accessibility/android/answer/9350862?hl=en> (advertising the availability of Live Caption in English, French, German, Italian, Japanese, and Spanish) (last visited July 30, 2024); https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0059762#h_9668257228481712859178546 (listing 35 supported languages for automatic captioning of video conferences) (last visited July 30, 2024).

¹⁶⁶ *Notice*, 37 FCC Rcd at 15251, para. 25.

¹⁶⁷ *See* Brattle Report at 26, para. 59 ("[T]here are several methods of allocating common costs, and in the case of a rate-regulated industry such as IP CTS, the physical unit method is usually most appropriate. The physical unit method allocates common costs based on the units produced, which in this case, would be the number of minutes for ASR-only and CA-assisted calls.").

year (here, 2023) with their projected expenses for the current calendar year (here, 2024).¹⁶⁸ The Commission has found this method to be a useful way to counteract providers' tendency to overestimate future costs.¹⁶⁹ We find no compelling reason for any substantial modification of this approach.¹⁷⁰ IP CTS providers' cost projections in the record do not include such dramatic variations as were raised by VRS provider projections in the recently concluded VRS compensation proceeding.¹⁷¹

56. *Adjustment Factor.* To ensure that compensation for CA-assisted service in the first year of the next period is sufficient to cover likely inflation-related cost increases (offset by productivity related decreases) between Fund Years 2023-24 and 2024-25, we adjust each provider's average allowable expenses for calendar years 2023 and 2024 by 3.77%, which is the change from fourth quarter 2022 to fourth quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted "total compensation for private industry workers in professional, scientific, and technical services."¹⁷² This adjustment uses the same index (described in more detail in Part III.E below) that will be used to adjust compensation for CA-assisted IP CTS in subsequent years of the compensation period.

57. We do not apply an adjustment factor to ASR-only service. As explained in Part III. below, an adjustment factor for ASR-only cost is not needed for this compensation period.

58. *Newly Allowable Cost Categories.* Although we revise several allowable-cost categories, as discussed in Part III.B above, the record does not indicate that these changes will result in any significant increase in the estimated cost of service. Previously non-allowable expenses reported for numbering activities are identified by each IP CTS provider in its annual cost report. However, because most IP CTS users do not require the assignment of numbers, average per-minute expenses reported for number assignment are less than \$.001 per minute, resulting in only a trivial cost adjustment. In the other categories of previously non-allowable costs discussed in Part III.B above, only one provider reported relevant non-allowable expenses for 2023 and 2024, and that provider has stated it was not able to segregate proprietary from non-proprietary software costs, or research and development for proprietary equipment from research and development for relay service.¹⁷³ As a result, even this provider did not report any expenses in newly allowable cost categories other than number assignment. Therefore, the changes in allowable cost categories do not result in any adjustment of estimated average allowable per-minute expenses for either CA-assisted or ASR-only IP CTS. For the reasons stated in Part III.B.5 above, costs for customer support provided by field staff remain non-allowable to the extent that they are attributable to installation, maintenance, or customer assistance with provider-distributed devices or software for proprietary devices.

¹⁶⁸ 2020 IP CTS Compensation Order, 35 FCC Rcd at 10882, para. 30.

¹⁶⁹ *Id.*

¹⁷⁰ Cf. CaptionCall July 1 *Ex Parte* at 3 (arguing that averaging historical and projected costs "does not adequately account for the need to increase expenses to achieve the Commission's objectives").

¹⁷¹ See 2023 VRS Compensation Order, paras. 51-56; see also *id.* para. 56 n.188 ("We do not anticipate that the modifications made below to address these issues will need to be repeated in subsequent compensation proceedings. The current confluence of pandemic-related effects, a sudden change in the inflation rate, shortage of skilled labor, and provider uncertainty regarding future costs is unlikely to recur.").

¹⁷² Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, <https://data.bls.gov/dataViewer/view/timeseries/CIS20154000000001> (last visited July 30, 2024).

¹⁷³ CaptionCall reported R&D expenses; however, those expenses are related to development of customer premises equipment, an expense category that remains non-allowable, see *supra* Part III.B.3, and there is no clear separation for expenses that relate to R&D beyond the mandatory minimum standards or access software. See Letter from John Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed Dec. 4, 2023) (CaptionCall Dec. 4 *Ex Parte*); see also CaptionCall Comments at 22-23, Appendix).

59. *Technology Cost.* Some commenters argue that the Commission should adjust allowable expenses to take account of an asserted need for increases in technology investment, beyond the amounts estimated in annual cost reports.¹⁷⁴ Given the excess in average TRS Fund payments above reasonable cost for the last several years, we find it implausible that IP CTS providers have been unable to spend reasonably necessary amounts in technology-related cost categories (engineering and research and development).¹⁷⁵ Due to the extraordinarily high average operating margins recently achieved by IP CTS providers, ample resources have been available to enable providers to purchase any technology they may need or develop it in-house. Further, the proliferation of ASR technology in other areas, including captioning for video conferencing and television, is likely to ensure that ASR development costs need not be borne by IP CTS providers alone.¹⁷⁶ Therefore, contrary to some commenters' claims,¹⁷⁷ we are not persuaded that extraordinary levels of additional support from the TRS Fund will be needed to assist IP CTS providers in securing necessary technology. In addition, we note that our compensation plan limits the cumulative reduction in the ASR-only compensation rate during the next compensation period, providing an above-cost "cushion" as a safeguard against any unpredicted increases in technology-related cost.¹⁷⁸

60. *CA Cost.* Some commenters argue that the current compensation rate is insufficient to support a wage rate for CAs at the level they assert is needed—specifically, the federal contractor minimum.¹⁷⁹ We note that, in contrast with the VRS compensation proceeding, the record here does not show that there is a continuing shortage of people qualified to work as IP CTS CAs.¹⁸⁰ Indeed, the recent substantial decline in CA-assisted IP CTS minutes suggests the opposite.¹⁸¹ On the other hand, we agree with CaptionCall that the quality of CA-assisted service likely will benefit if CAs are paid at higher hourly rates.¹⁸² To this end, as discussed in Part III.D, we prescribe two rates for CA-assisted service: (1) a base rate, which we determine using the established average cost methodology; and (2) a supplemental rate, applicable to the minutes handled by those CAs whose hourly wages exceed a threshold amount.

¹⁷⁴ In the *2023 VRS Compensation Order*, the Commission found that, due to special circumstances, substantial increases in VRS spending on new technology would be necessary—beyond the amounts already reflected in the average allowable expenses reported by VRS providers for the prior year and projected for the current year. *2023 VRS Compensation Order*, paras. 58-65. Therefore, the Commission adjusted the baseline of allowable VRS costs to include estimates of such additional spending. *Id.*

¹⁷⁵ In 2021, IP CTS providers reported average expenses of approximately \$0.93 per minute and were paid approximately \$1.36 per minute from the TRS Fund (\$1.42 in January-June and \$1.30 in July-December), for an operating margin of 46.2%. 2024 TRS Fund Report, Exhibit 1-3. In 2022, they reported average expenses of approximately \$0.83 per minute and were paid \$1.30, for an operating margin of 56.9%. *Id.* In 2023, they reported average expenses of approximately \$0.72 per minute and were paid \$1.30, for an operating margin of 80.6%. *Supra* Table 1.

¹⁷⁶ As noted in the preceding paragraph, providers have not reported incurring any additional research and development expenses for 2023 and 2024 in the newly allowable category of expenses for research and development to improve IP CTS beyond what is necessary to meet minimum TRS standards.

¹⁷⁷ See, e.g., CaptionCall Comments at 19-23; Letter from Michael Strecker, ClearCaptions, and Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 14 (filed Dec. 19, 2023).

¹⁷⁸ See *infra* Part III.D.2.

¹⁷⁹ See, e.g., CaptionCall May 23 *Ex Parte* at 5-6.

¹⁸⁰ Cf. *2023 VRS Compensation Order*, paras. 52, 59.

¹⁸¹ Monthly CA minutes declined from 36.3 million in January 2022 to a projected 7.9 million in January 2024. ASR-Only and CA-Assisted Cost and Demand Totals.

¹⁸² CaptionCall July 1 *Ex Parte* at 4-5.

61. *Marketing and Outreach Cost.* Some commenters contend that the Commission should set rates that provide an additional incentive to engage in marketing and outreach, e.g., “to ensure the IP CTS industry invests in growth to change lives by reaching and offering the service to more qualifying consumers.”¹⁸³ They claim that only a small fraction of consumers who would benefit from IP CTS are being served.¹⁸⁴ ClearCaptions blames declining compensation rates for causing a reduction in marketing expenditures by providers.¹⁸⁵ According to providers’ cost reports, however, marketing expenditures have *increased* substantially since 2020, both in dollars per minute and as a percentage of total allowable expenses.¹⁸⁶ IP CTS providers reported spending an average of \$.0903 per minute, or 13.0% of total expenses, on marketing in 2023, and projected spending \$.1114 per minute, in 2024, or 15.0% of total expenses, in 2024.¹⁸⁷ These percentages are far higher than in any recent year—and will continue to be supported at that level by the rates set in this Report and Order.¹⁸⁸ Given the significant increase in marketing expenditures, the cost data do not suggest a need to provide additional monetary incentives for providers to find new IP CTS customers.

62. We also do not find it credible that, despite the extraordinarily large operating margins (far above the allowed 10% level) actually earned by providers at the current rate, IP CTS providers have been unable to spend what is needed to market the service to likely customers.¹⁸⁹ Nor do we find it credible that IP CTS providers cannot continue to do so as rates are reduced to allow more reasonable operating margins. In this regard, we note that, despite some commenters’ claims, the number of people in the United States who could benefit from IP CTS is largely a matter of speculation. While ClearCaptions suggests that the estimated 12.8 million U.S. residents with moderate to profound hearing loss are all “potential IP CTS customers,”¹⁹⁰ many individuals who use hearing aids do not need the additional assistance of IP CTS. There are a variety of other sources of communications assistance available to this population, including hearing-aid compatible telephones and mobile phones,¹⁹¹ specialized high-amplification phones, and increasingly, commercially available ASR-enabled telephones and services.¹⁹² In addition, many seniors with moderate to profound hearing loss may be precluded from

¹⁸³ ClearCaptions Comments at 17; CaptionCall May 23 *Ex Parte* at 4-5.

¹⁸⁴ ClearCaptions Comments at 17 (“Research has shown that only approximately four percent of the potential IP CTS customers are receiving IP CTS”); CaptionCall May 23 *Ex Parte* at 4-5.

¹⁸⁵ ClearCaptions Comments at 19.

¹⁸⁶ See 2024 TRS Fund Report, Exh. 1-3.

¹⁸⁷ *Id.* In Exhibit 1-3 of the 2024 TRS Fund Report, there is no line for average per-minute expenses. Average expenses can be derived by subtracting “Operating Margin” from “Total Cost.” This is a significant increase even compared with 2022 levels. See *id.* (showing that IP CTS marketing expenses in 2022 averaged \$.0703 per minute); cf. Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, Attach. 1 at 2 (filed May 22, 2024) (ClearCaptions May 22 *Ex Parte*) (asserting that “[p]rovider underspending in marketing and outreach is contributing to decreasing cost per minute”).

¹⁸⁸ As a percentage of average provider expenses, marketing and outreach expenses (as a combined category) declined from 6.7% in 2018 to 5.1% in 2020, likely due to the pandemic, but then increased to 13.0% in 2023, and were projected to reach 15.0% in 2024. 2024 TRS Fund Report, Exh. 1-3.

¹⁸⁹ ClearCaptions Comments at 8.

¹⁹⁰ *Id.* at 17.

¹⁹¹ *Achieving 100% Wireless Handset Model Hearing Aid Compatibility; Improvements to Benchmarks and Related Requirements Governing Hearing-Aid Compatible Mobile Handsets*, WT Docket Nos. 23-388 and 15-285, Notice of Proposed Rulemaking, FCC 23-108 (Dec. 14, 2023).

¹⁹² See, e.g., 2018 *VRS Improvements Order*, 33 FCC Rcd at 5805-06 (describing overmarketing of IP CTS to persons who may be better served by other types of equipment); <https://teltext.com/teltext-glt-w-v2t-10/> (last visited July 30, 2024). Additionally, live captions are available natively on iPhone 11 and later models and on Android

(continued....)

benefitting from a captioning service due to vision-related or cognitive disabilities. We are setting TRS Fund support at a level that should encourage reasonable efforts to promote IP CTS among people who can benefit from it, but there is no evidence to support the assumption that everyone with at least moderate hearing loss needs, wants, and is able to use the service.

3. Operating Margin

63. *Background.* In the *Notice*, the Commission proposed that IP CTS compensation should continue to allow an average operating margin above allowable expenses within the range the Commission found applicable in the *2020 IP CTS Compensation Order*.¹⁹³ That range is 7.6% to 12.35%.¹⁹⁴ The *Notice* also sought comment on whether to continue to set the target operating margin at 10%, the approximate mid-point of that range. Some commenters argue for a higher allowed operating margin. For example, CaptionMate contends that “while 10% is a reasonable operating margin (if all reasonable costs are included and there is some rate security), the FCC should consider this as a floor, rather than a ceiling, for a compensation rate sufficient to promote functionally equivalent telecommunications services.”¹⁹⁵ ClearCaptions urges the Commission to establish a substantially higher range.¹⁹⁶ CaptionCall asserts that “[t]he Commission should re-examine its prior permitted cost-plus operating margin determination entirely because it failed to adjust for the fact that it was determining a cost-plus margin rather than an operating margin as a percentage of revenue, and a more thorough analysis by FTI shows that the specified ten percent margin is insufficient to sustain a healthy TRS company.”¹⁹⁷ Additionally, Hamilton’s expert asserts that “[g]iven the magnitude of disallowed costs, the [operating] margin needs to be at least {[]} based on allowed cost, for Hamilton to make a 10% effective margin.”¹⁹⁸ On behalf of ClearCaptions, FTI submits two versions of a study of operating margins in related industries.¹⁹⁹

64. *Discussion.* We adopt the proposal to maintain the previously established reasonable range of operating margins (7.6%-12.35%), and we set the operating margin for the next period at 10%, the same level set by the Commission in 2020. We find no reason to change the operating margin from the previously allowed level. In particular, the record does not support arguments that the allowed 10% operating margin is insufficient to encourage capital investment in IP CTS.

65. The current range of reasonable operating margins for IP CTS is based on an average of the margins earned in analogous industries, including government contracting and the professional service sector that includes translation and interpretation services, as well as information technology

(Continued from previous page) — phones running Android 11 or higher. “Get live captions of spoken audio on iPhone,” Apple.com, <https://support.apple.com/guide/iphone/get-live-captions-beta-iphc0990f7bb/17.0/ios/17.0> (last visited July 30, 2024); Maxwell Holland, “How to Turn On, Use, and Turn Off Live Caption on Android,” Make Use Of (April 13, 2023), <https://www.makeuseof.com/how-to-turn-on-and-use-live-caption-on-android/>.

¹⁹³ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10880, para. 28; *Notice*, paras. 36-37.

¹⁹⁴ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10880, para. 28. In the *Notice*, the lower bound of the previously established range was incorrectly stated as 7.75%. *Notice*, 37 FCC Rcd at 15256, para. 36.

¹⁹⁵ CaptionMate Comments at 3.

¹⁹⁶ ClearCaptions Comments at 15.

¹⁹⁷ CaptionCall Reply at 26.

¹⁹⁸ Brattle Reply Report at 11.

¹⁹⁹ See Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, CG Docket Nos. 22-408, 03-123, 13-24, Attach. (filed July 11, 2023) (ClearCaptions July 11 *Ex Parte*); Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, 13-24, Attach. (filed May 18, 2023) (ClearCaptions May 18, 2023 *Ex Parte*).

consulting.²⁰⁰ For CA-assisted IP CTS, like VRS, labor costs continue to comprise a large percentage of total costs. Therefore, we find that the current range of operating margins is appropriate for the same reasons cited in the *2023 VRS Compensation Order*.²⁰¹ ASR-based IP CTS, by contrast, is not labor intensive, as the CAs are replaced by ASR software. Nonetheless, as explained below, we find that the current reasonable range, with the approximate midpoint at 10%, remains appropriate for ASR-based IP CTS.

66. ASR-based IP CTS does not depend on labor to generate captions. In addition to saving on labor costs, it requires even less physical plant than CA-assisted IP CTS, thus saving on capital costs as well.²⁰² Nor is it a very high-risk business. Apart from the spike in demand during the COVID-19 pandemic, demand for IP CTS has shown steady growth since 2015.²⁰³ Further, while other businesses may face price fluctuations based on, for example, changing demand and the pricing decisions of competitors, IP CTS providers can rely on government-established prices that are predetermined for a period of several years.

67. ClearCaptions' expert, FTI, does not provide a convincing explanation of its view that average margins for the competitive telecommunications firms, or for a mix of firms in the communications and information technologies sector, would provide a more appropriate benchmark. As a preliminary matter, we note that FTI's initial study of the margins earned by allegedly comparable firms included telecommunications carriers.²⁰⁴ As explained in prior Commission orders, the operating margin approach was adopted because the Commission recognized that TRS providers are *unlike* the telecommunications industry, in that TRS is not a capital-intensive business.²⁰⁵ Any proposed benchmark that includes the operating margins of telecommunications carriers clearly would not be appropriate for IP CTS.

68. While the most recent analysis submitted by FTI does purport to filter out capital-intensive companies from the sample of information and communications technology firms, the use of a benchmark based on the high technology sector remains flawed, for several reasons.²⁰⁶ First, while ASR-only IP CTS relies on technology, technology costs do not loom large in the providers' cost profiles. Rather, the biggest expense categories in IP CTS providers' cost reports are subcontractor expenses, marketing, and operations support. Engineering expenses—even when combined with R&D—come fourth.²⁰⁷ Second, the FTI analysis looks at a sample of companies with net profit of up to 100%. We are not persuaded that the companies from the sample are comparable to TRS providers. Third, IT companies

²⁰⁰ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5903-05, paras. 24-26.

²⁰¹ See *2023 VRS Compensation Order*, paras. 74-80.

²⁰² See ASR-Only and CA-Assisted Cost and Demand Totals.

²⁰³ See 2023 TRS Fund Report, Exh. 1-3.c (IP CTS Demand Actuals vs. Provider Projections showing IP CTS demand January 2018-January 2023); Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 1-4 (filed by CGB on May 1, 2020) (showing IP CTS demand from January 2015 to March 2020).

²⁰⁴ See ClearCaptions May 18, 2023 *Ex Parte*, Attach.

²⁰⁵ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5903, para. 23 (“[I]n light of the relatively low level of plant investment required for VRS, we conclude that an operating-margin approach, if based on a reasonable estimate of an appropriate margin, is better suited to compensating VRS providers for capital costs”); *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10880 (“By allowing providers a reasonable margin over expenses, which is not tied to the relatively low capital investment in physical plant that is needed for the provision of IP CTS, this will help ensure sufficient investment in the provision of this service”).

²⁰⁶ See ClearCaptions July 11 *Ex Parte*, Attach.

²⁰⁷ See ASR-Only and CA-Assisted Cost and Demand Totals.

typically involve high risk, while the degree of risk faced by IP CTS providers is limited, as discussed above.

69. We do not see a reason why ASR-only IP CTS would have a higher risk level than CA-assisted IP CTS and therefore warrant a higher operating margin. While CA-assisted IP CTS faces some labor market risk, ASR-only IP CTS does not. Both services share a stable demographic from which to draw customers, and predictable support levels. Based on these factors, we find that it is appropriate for ASR-only IP CTS to have the same reasonable range of operating margins as CA-assisted IP CTS.

D. Compensation Period and Rates

1. Compensation Period

70. We adopt a compensation period that begins the first month after the effective date of this Report and Order and ends June 30, 2029—approximately a five-year period, longer than we proposed in the *Notice*.²⁰⁸ We conclude that this period is long enough to give providers some degree of certainty regarding the applicable compensation levels and an incentive to improve efficiency,²⁰⁹ but also short enough to allow timely reassessment of the compensation formulas in response to potential unanticipated cost changes and other significant developments.²¹⁰ We find substantial support in the record for adopting this time frame.²¹¹

2. ASR-Only Rate

71. For ASR-only service, we estimate average cost as follows. First, we total all providers' reported allowable expenses for 2023 and 2024, respectively (including newly allowable costs that were reported). Next, we divide these results by 2023 and 2024 minutes, to yield average expenses per minute. Then we average the per-minute rates for 2023 and 2024 to get a blended average of expenses per minute for 2023-24. Finally, we add a 10% operating margin. *See* Table 2 below.

Table 2: Estimating the Current Cost of ASR-Only Service

	2023	2024	Avg. 2023-24
Reported Expenses	\$245,834,161	\$315,003,123	
Newly Allowable Expenses	\$1,081,245	\$55,406	
Total Allowable Expenses	\$246,915,406	\$315,058,529	
Inflation Adjustment (%) ²¹²			
Adjusted Expenses	\$246,915,406	\$315,058,529	
Average Minutes	407,028,250	485,696,932	
Adjusted Expenses per Minute	\$0.61	\$0.65	\$0.63
Operating Margin (%)			10.0%
Average Per-Minute Cost (including operating margin)			\$0.69

²⁰⁸ *Notice*, 37 FCC Rcd at 15253, para. 40.

²⁰⁹ *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, 8 FCC Rcd 1802, 1806, para. 25 (1993) (noting that setting compensation levels based on averaged provider costs, if recalculated every year, could leave some providers without adequate compensation, even if they are reasonably efficient).

²¹⁰ *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58.

²¹¹ *See* CaptionCall May 23, 2024 *Ex Parte* at 7; CaptionMate May 14 *Ex Parte* at 3; CaptionCall June 3 *Ex Parte* at 3 (recommending five-year term because rate stability is needed to make long-term investments)

²¹² No inflation adjustment is made for ASR-only expenses. *See infra* Part III.E.

72. *Glide Path for ASR-Only Rate.* The average per-minute cost (including operating margin) for ASR-only IP CTS for 2023-24 is \$0.69. To fulfill our role as steward of the TRS Fund, it is important that we set a course toward a rate reduction. However, we are concerned that an immediate 47% rate reduction could disrupt the provision of both methods of IP CTS by forcing less efficient providers to immediately adjust their spending to reflect reduced revenue. Further, while we have found the current cost and demand data sufficiently reliable to justify setting a separate ASR-only rate, we also recognize that future cost developments for this service mode are not easy to predict, and that the bifurcation of the rate itself may cause some cost changes over time.²¹³ Therefore, we adopt a variant of the “glide path” approach similar to that used in prior TRS compensation proceedings.

73. Under the approach we adopt, the ASR-only rate will be reduced by approximately 10% annually for the first three years of the period.²¹⁴ Under this approach, the initial ASR-only rate, applicable from the effective date through June 30, 2025, will be \$1.17; the second-year rate, applicable from July 1, 2025, through June 30, 2026, will be \$1.05; the third-year rate, applicable from July 1, 2026, through June 30, 2027, will be \$0.95. For the fourth and fifth years, through June 30, 2029, the ASR-only compensation rate will remain at \$0.95.

74. As discussed above, the cost and demand data now available on ASR-only service, which includes at least 20 months of historical data (as well as 24 months of projected cost data) from every mature IP CTS provider, has significantly increased our confidence that the average per-minute cost of ASR-only service is substantially below the cost of CA-assisted service.²¹⁵ But we acknowledge that ASR is a nascent service,²¹⁶ that ASR-only cost patterns may change over time in unpredictable ways, and that there is room for improvement in the quality of ASR-only service, which could entail increased cost.²¹⁷ By limiting the cumulative reduction of the ASR-only compensation rate during this period, we are able to leave the issue of quantifying such costs to be addressed in the future, based on actual provider cost reports, should that be necessary. At the end of the five-year rate cycle established today, the Commission will be able to assess additional years of ASR-only cost data and adjust costs as necessary at that time.

75. We conclude that this approach provides a sufficient safeguard against the possibility of unexpected increases in ASR-only IP CTS costs during the compensation period, including any plausible need for additional investment in R&D and technology.²¹⁸ In effect, our approach establishes a \$0.95 “floor” on the compensation rate for ASR-only service for the duration of the compensation period, rather

²¹³ See CaptionCall Nov. 21 *Ex Parte* at 6 (urging the Commission to provide a transition of no more than 10% reduction per year, asserting, *inter alia*, that ASR-only IP CTS is a nascent service with no settled cost pattern); Letter from Tamar E. Finn, Counsel to ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 03-24, Attach. at 19 (filed Nov. 22, 2023) (ClearCaptions Nov. 22 *Ex Parte*) (recommending not decreasing any rate by more than 10% per year); CaptionCall June 3 *Ex Parte* at 2 (recommending a 10-per-cent-per-year transition for ASR-only rates).

²¹⁴ As indicated in the previous footnote, there is significant support in the record for a glide path with a 10% “slope.”

²¹⁵ See *supra* para. 25.

²¹⁶ CaptionCall May 23 *Ex Parte* at 6 (explaining that “ASR is still a nascent service, and providers’ historical costs do not reflect a settled cost pattern that can reliably predict future costs”).

²¹⁷ We note that, to the extent that providers compete to provide a superior quality of service, such costs may be incurred regardless of whether the Commission establishes and enforces quality-of-service metrics. See *id.* at 6 (arguing that additional costs will be incurred to meet quality-of-service metrics).

²¹⁸ In any event, the Commission is not precluded from revisiting the compensation plan prior to its expiration, should that be deemed necessary. See *supra* para. 34.

than the \$1.00 or \$0.99 “floor” advocated by some commenters.²¹⁹ Although advocates for a somewhat higher “floor” contend that their preferred level is necessary to ensure sufficient support for specified (but unreported) levels of marketing and technology expenses, as well as non-allowable CPE-related costs,²²⁰ we reject these arguments for the various reasons discussed in Part III.C.2 above.²²¹

3. CA-Assisted Base Rate

76. For CA-assisted service, we establish a base compensation rate by applying the methodology discussed above.²²² We total all providers’ reported allowable expenses for 2023 and 2024 (including newly allowable costs that were reported). We then adjust the totals for inflation. Next, we divide the results by 2023 and 2024 minutes, to yield average expenses per minute. Then we average the per-minute rates for 2023 and 2024 to get a blended average of expenses per minute for 2023-24. Finally, we add a 10% operating margin to arrive at a base rate. See Table 3 below. The cost-based rate for CA-assisted IP CTS is \$1.35, \$0.05 higher than the current rate. This rate will apply in the first year of the new compensation period, Fund Year 2024-25.

Table 3: Base Rate for CA-Assisted Service

	2023	2024	Avg. 2023-24
Reported Expenses	\$144,676,381	\$117,119,751	
Newly Allowable Expenses	\$35,467	0	
Total Allowable Expenses	\$144,711,848	\$117,119,751	
Inflation Adjustment (%)	3.77%	3.77%	
Adjusted Expenses	\$150,167,485	\$121,535,166	
Average Minutes	138,864,229	88,782,094	
Adjusted Expenses per Minute	\$1.08	\$1.37	\$1.23
Operating Margin (%)			10.0%
Cost-Based Rate			\$1.35

77. *Alternative CA-Assisted Rate Proposals.* We decline to adopt the alternative CA-assisted rates recommended by ClearCaptions (\$1.58 per minute), CaptionCall (\$1.67 per minute) and Hamilton (\$1.78 per minute).²²³ The rates recommended by ClearCaptions and CaptionCall are based on their requests that the Commission (1) revisit its longstanding policy disallowing TRS Fund support for the cost of provider-distributed CPE, (2) increase support for CA wages, technology costs, and

²¹⁹ ClearCaptions May 20 *Ex Parte*, Attach. at 10 (advocating \$1 floor); Hamilton June 6 *Ex Parte* at 2 (advocating \$1 floor); CaptionCall July 1 *Ex Parte* at 6 (advocating \$0.99 floor).

²²⁰ ClearCaptions May 20 *Ex Parte*, Attach. at 10; CaptionCall July 1 *Ex Parte* at 6.

²²¹ CaptionCall also contends that the floor it advocates is needed to ensure that the per-minute dollar amount of operating margin earned by a provider from ASR-only service is not lower than the dollar amount of operating margin earned from CA-assisted service. CaptionCall May 23 *Ex Parte* at 6-7. While we do not necessarily agree with the premise of this argument (that provider incentives are based on the per-minute dollar amount of operating margin rather than the percentage of underlying cost that it represents), it is unnecessary to decide this question. As noted above, *supra* paras. 74-75, a \$0.95 rate for ASR-only service still provides a substantial cushion above allowable per-minute expenses, rendering it highly unlikely that the average dollar amount of ASR-only operating margin will fall below the average dollar amount of CA-assisted operating margin.

²²² This is a “base” rate because it is subject to annual adjustment.

²²³ See ClearCaptions May 20 *Ex Parte*; CaptionCall July 1 *Ex Parte*; Hamilton June 6 *Ex Parte* at 2.

outreach/marketing beyond cost-based levels, and (3) increase the allowed operating margin to the 16-21% range.²²⁴ For the reasons stated in Parts III.B.3, C.2, and C.3 above, we decline most of these requests. However, support for CA wages is addressed through a conditional rate supplement, discussed below. Hamilton’s recommended \$1.78 rate is based on its recommendation to use a “mean plus one standard deviation” approach in lieu of average cost,²²⁵ which we decline to adopt for the reasons stated in Part III.C.2.

4. Conditional Supplement to the CA-Assisted Rate

78. As explained in Part III.C.2 above, we seek to ensure that IP CTS providers have the ability to provide a high quality of CA-assisted service. The record reflects that some IP CTS CAs are currently paid below the federal contractor minimum wage (currently \$17.20 per hour).²²⁶ We recognize that there is likely a correlation between the quality of CA-assisted service and the amount of compensation that CAs receive.²²⁷ Therefore, we seek to ensure that providers are able, if they choose, to pay CA wages at least equal to the federal contractor minimum. To this end, we establish a supplemental rate for CA-assisted service, applicable to any of the four providers currently certified to provide CA-assisted service,²²⁸ for those minutes of service for which the CAs producing captions were paid a minimum hourly rate, initially set at \$17.20.²²⁹ We conclude that, in these circumstances, payment of a higher rate for CA service meeting the stated condition will produce service-quality improvements that are approximately commensurate with the higher cost to the TRS Fund, and therefore will not significantly affect the efficiency with which IP CTS is provided.

79. The record contains limited information on the CA wages currently paid by IP CTS providers and their subcontractors. However, we estimate that if CA wages averaged \$17.20 per hour in 2023-24, the average cost of CA service (including a 10% operating margin) would rise by approximately \$0.21.²³⁰ To ensure reasonable compensation for providers of CA-assisted service that raise CA wages to this threshold, we adopt a rate supplement of \$0.21 per minute, initially applicable to those minutes for

²²⁴ CaptionCall July 1 *Ex Parte*; ClearCaptions November 9 *Ex Parte*, Attach. at 14-19.

²²⁵ Hamilton June 6 *Ex Parte* at 2.

²²⁶ See, e.g., CaptionCall July 1 *Ex Parte* at 4-5 (stating that the average hourly wage for CaptionCall’s CAs in 2023 was {{ }}).

²²⁷ As CaptionCall puts it, an average substantially lower than \$17.20 per hour “is not a living wage that will attract CAs and encourage them to stay and develop their expertise. . . . There is no reason why rates for CA-based IP CTS should not support wages at least as high as the federal contractor minimum wage.” *Id.* at 4-5.

²²⁸ The four current providers of CA-assisted service are CaptionCall, ClearCaptions, Hamilton, and InnoCaption.

²²⁹ If we were to set a generally applicable compensation rate for CA-assisted service based on the assumption that, going forward, all IP CTS providers would pay that minimum, we would have no assurance that this reality will match that assumption. Especially in the absence of a labor shortage comparable to that affecting VRS providers, we have less confidence that labor market factors will induce IP CTS providers to pay higher wages to CAs. *Cf.* 2023 *VRS Compensation Order*, paras. 52, 59.

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}} With all CAs paid an average of \$17.20 per hour, staff estimates that industrywide average expenses per minute for CA-assisted service would increase by approximately \$0.19 per minute. See Updated Cost and Demand Reports; May 21 Cost and Demand Supplements (confidential). After application of the 3.77% inflation adjustment (*supra* para. 56) and 10% operating margin (*supra* para. 64), average cost would increase by \$0.21 per minute.

which the CA producing captions is paid at least \$17.20 per hour. The threshold amount of \$17.20 per hour will be adjusted in the second and third years of the compensation period by the same factor applicable to the rates for CA-assisted service.

80. We direct the TRS Fund administrator to issue instructions to the four providers of CA-assisted service defining the method and format by which wage information should be submitted for any CA as to which a provider claims application of the rate supplement. We delegate authority to CGB and OMD to review and approve such instructions.

81. To prevent waste, fraud, and abuse of the TRS Fund, the rule we adopt expressly provides that the initial payment of this compensation supplement is a preliminary payment, conditional on subsequent verification by audit that the CAs producing captions for minutes for which the supplement was paid actually were paid the hourly rate claimed by the provider. In this regard, we note that any of the four IP CTS providers certified for CA-assisted service may request application of the rate supplement to minutes for which captioning was provided by a subcontractor. However, the provider is responsible for ensuring and documenting the accuracy of its representations to the TRS Fund administrator regarding the wages paid to the subcontractor's CAs. Further, a subcontractor's CA wages are equally subject to subsequent verification and audit. In such subsequent audit, if an IP CTS provider fails to produce documentation, satisfactory to the TRS Fund administrator, verifying the hourly rate paid to affected CAs—whether employed by the provider or a subcontractor—then the administrator is entitled to immediately reclaim any prior payments of the rate supplement for minutes handled by such CAs, by offsetting such prior payments against any amounts claimed in the provider's next monthly compensation request.

5. When the Revised Rates Apply

82. To ensure that no party is adversely affected by the timing of this Report and Order, the new rates will not be applicable until the first day of the first month that begins after the effective date of this Report and Order. Therefore, we direct the TRS Fund administrator to continue compensating providers of IP CTS under the current compensation formula of \$1.30 per minute for all service provided through the last day of the calendar month that immediately precedes the effective date of this Report and Order.²³¹ Service provided on or after the first day of the first month that begins after the effective date shall be paid in accordance with the formulas adopted in this Report and Order.²³²

E. Annual Adjustment of Formulas

83. In the *Notice*, the Commission sought comment on whether a price indexing formula, analogous to price-cap factors, should be applied during a multi-year compensation period, and on the appropriate indices to use to reflect inflation and productivity.²³³ For CA-assisted IP CTS, the Commission proposed to use the Bureau of Labor Statistics' Employment Cost Index for "professional, scientific, and technical services" (ECI-PST)—the same index used to annually adjust compensation for VRS and IP Relay, on the basis that this seasonally adjusted index, which includes translation and interpreting services, would more accurately reflect changes in relevant costs than would a more general index of price changes.²³⁴ The Commission also sought comment on whether this index or another index

²³¹ Cf. *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10870-71, para. 11.

²³² For example, if the Order becomes effective on September 15, 2024, IP CTS providers will be paid \$1.30 per minute for all compensable minutes of service provided through September 30, 2024, and will be paid in accordance with the formulas adopted in this Report and Order for all compensable minutes of service provided from October 1, 2024, through June 30, 2027.

²³³ *Notice*, 37 FCC Rcd at 15257, para. 42.

²³⁴ *Id.* at 15258, para. 44.

would be appropriate for ASR-only IP CTS, given that ASR-only IP CTS is not primarily labor based,²³⁵ and how to ensure that productivity is properly accounted for in annual adjustments.²³⁶

84. The record includes varying perspectives on the appropriate approach to adjustments. InnoCaption and CaptionCall both expressed support for the Commission's proposal.²³⁷ On the other hand, Hamilton is of the view that "if the Commission wants to have a common inflation factor for both CA-assisted and ASR-only services, then the GDP price index (GDP-PI), an inflation factor based on U.S. Gross Domestic Product, would be a good candidate."²³⁸ These commenters all contend that a productivity adjustment is not necessary.²³⁹

85. For CA-assisted IP CTS, we adopt the proposed ECI-PST index for adjusting the CA-assisted IP CTS compensation formula.²⁴⁰ This approach is consistent with the index currently used to adjust the compensation formulas for VRS and IP Relay.²⁴¹ As with IP Relay and VRS, labor is the largest expense incurred to provide CA-assisted IP CTS and the most likely to cause a cost increase over time.²⁴² And as with VRS and IP Relay, the ECI-PST index tracks an industry sector similar to CA-assisted IP CTS.²⁴³ We assume that this index reasonably captures relevant productivity enhancements as well, and that accordingly, it is not necessary to set a separate productivity factor at this time.

86. For ASR-only IP CTS, we conclude it is unnecessary to adopt an adjustment factor at this time. It is possible that a technology-based service of this kind may exhibit productivity enhancements over time, which may more than offset the general inflation rate. However, we also recognize that technology cost is only one component—and not the largest component—of the cost of ASR-only service.²⁴⁴ We believe that, after five years of additional experience with ASR-only service, the Commission will be better positioned to adopt an appropriate adjustment factor. In the interim, we conclude that an adjustment factor is not needed, as a 10% annual reduction in the ASR-only rate will leave this rate substantially above average 2023-24 cost through the end of the compensation period.

87. As proposed,²⁴⁵ the compensation rule we adopt also provides for annual review and adjustment of any claims for exogenous cost recovery, in accordance with the criteria adopted in the *2020 IP CTS Compensation Order*.²⁴⁶

²³⁵ *Id.*

²³⁶ *Id.* at 15248, para. 45.

²³⁷ See InnoCaption Comments at 14; CaptionCall Comments at 37.

²³⁸ Brattle Report at 31, para. 72.

²³⁹ See Hamilton Comments at ii, 18; InnoCaption Comments at 15; CaptionCall Comments at 37–38; CaptionCall Reply Comments at 20–21.

²⁴⁰ Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, <https://data.bls.gov/dataViewer/view/timeseries/CIS2015400000000I> (last visited July 30, 2024).

²⁴¹ See *2023 VRS Compensation Order*, para. 121; *2022 IP Relay Compensation Order*, 37 FCC Rcd at 8024, para. 41.

²⁴² See *2023 VRS Compensation Order*, para. 121; *2022 IP Relay Compensation Order*, 37 FCC Rcd at 8024, para. 41.

²⁴³ See *2023 VRS Compensation Order*, para. 121.

²⁴⁴ See ClearCaptions July 1, 2024 *Ex Parte* at 14.

²⁴⁵ Notice, 37 FCC Rcd at 15266, Appx. A.

²⁴⁶ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10886, para. 39.

IV. ORDER

88. In a series of Commission and Bureau orders, the current IP CTS compensation formula, which originally was scheduled to expire on June 30, 2022, has been extended through June 30, 2024.²⁴⁷ We grant, on our own motion, a temporary waiver to further extend the expiration date of the current formula until the first day of the first month after the effective date of this Report and Order.

89. A Commission rule may be waived for good cause shown.²⁴⁸ In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.²⁴⁹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁵⁰ Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.²⁵¹

90. We find good cause to grant this further waiver of the expiration date. If we were to let the current compensation plans expire, the cessation of payments to IP CTS providers could cause an interruption of the delivery of these services to consumers with disabilities who rely on them for functionally equivalent communication. Under these circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas.²⁵²

V. PROCEDURAL MATTERS

91. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁵³ 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.”²⁵⁴ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

92. *Paperwork Reduction Act – Final.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).²⁵⁵ 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 2002.²⁵⁶

93. *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

²⁴⁷ 2022 TRS Funding Order, 37 FCC Rcd at 7670-71, paras. 11-14, 2023 TRS Funding Order, para. 17; November 2023 Extension Order; December 2023 Extension Order.

²⁴⁸ 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

²⁴⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵⁰ *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.

²⁵¹ *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

²⁵² See 2021 VRS Compensation Extension Order, 36 FCC Rcd at 8818, para. 43.

²⁵³ See 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁵⁴ 5 U.S.C. § 605(b).

²⁵⁵ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

²⁵⁶ Pub. L. No. 107-98 (codified at 44 U.S.C. 3506(c)(4)).

rule is “non-major” under the Congressional Review Act.²⁵⁷ 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).²⁵⁸

VI. ORDERING CLAUSES

94. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Report and Order IS ADOPTED and the Commission’s rules are hereby AMENDED as set forth in Appendix B.

95. IT IS FURTHER ORDERED that, the Report and Order and the amendments to the Commission’s rules SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

96. IT IS FURTHER ORDERED that the Order SHALL BE EFFECTIVE upon release.

97. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

98. IT IS FURTHER ORDERED that the Commission’s Office of the Secretary, SHALL SEND a copy of the 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

²⁵⁷ 5 U.S.C. § 804(2).

²⁵⁸ *Id.* § 801(a)(1)(A).

Appendix A

List of Commenting Parties

Comments

CaptionCall, LLC (CaptionCall)

CaptionMate, LLC (CaptionMate)

ClearCaptions, LLC (ClearCaptions)

Hamilton Relay, Inc. (Hamilton)

Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Communication Service for the Deaf (CSD), National Association of the Deaf (NAD), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC) (collectively, AARO)

Mezmo Corporation (dba InnoCaption) (InnoCaption)

Ultratec, Inc. (Ultratec)

Reply Comments

CaptionCall

ClearCaptions

Hamilton

Hearing Loss LIVE! (HLL)

Marc Safman

Appendix B

Final Rules

The Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart F - Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

3. Add § 64.641 to subpart F to read as follows:

§ 64.641 Compensation for Internet Protocol Captioned Telephone Service.

(a) *Captioning with only automatic speech recognition technology.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]** through June 30, 2029, TRS Fund compensation for the provision of Internet Protocol Captioned Telephone Service when captioning is produced using only automatic speech recognition technology (ASR-only IP CTS) shall be as described in this paragraph.

- (1) *Initial Rate.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]**, through June 30, 2025, the Compensation Level for ASR-only IP CTS shall be \$1.17 per minute.
- (2) *Second Year Rate.* For the period from July 1, 2025, through June 30, 2026, the Compensation Level for ASR-only IP CTS shall be \$1.05 per minute.
- (3) *Rates for Subsequent Years.* For the period from July 1, 2026, through June 30, 2029, the Compensation Level for ASR-only IP CTS shall be \$0.95 per minute.

(b) *Captioning with communications assistants.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]**, through June 30, 2029, TRS Fund compensation for the provision of Internet Protocol Captioned Telephone Service when captioning is produced with communications assistants (CA-assisted IP CTS) shall be as described in this paragraph.

- (1) *Initial Rate.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]**, through June 30, 2025, the Compensation Level for CA-assisted IP CTS shall be \$1.35 per minute.

- (2) *Succeeding Years.* For each succeeding TRS Fund Year through June 30, 2029, the per-minute CA-Assisted Compensation Level shall be determined in accordance with the following equation:

$$L_{FY} = L_{FY-1} * (1 + AF_{FY})$$

where L_{FY} is the CA-Assisted Compensation Level for the new Fund Year, L_{FY-1} is the CA-Assisted Compensation Level for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year.

- (3) *Adjustment Factor.* The Adjustment Factor for a Fund Year (AF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as

defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

- (i) Final Value - The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
- (ii) Initial Value - The fourth quarter of the preceding Calendar Year.

(c) *Supplemental Compensation for CA-assisted IP CTS.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]**, through June 30, 2029, Supplemental Compensation for CA-assisted IP CTS may be paid in accordance with this paragraph to any of the following four IP CTS providers currently certified to provide CA-assisted IP CTS: CaptionCall, ClearCaptions, Hamilton, InnoCaption (Certified Providers).

(1) *Initial Rate.* For the period from **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST MONTH THAT BEGINS AFTER THE EFFECTIVE DATE]**, through June 30, 2025, the Supplemental Compensation Rate for CA-assisted IP CTS shall be \$0.21 per minute. This rate shall be paid, in addition to the compensation defined in paragraph (b) of this section, for all compensable minutes of CA-assisted service provided by a Certified Provider for which the communications assistant producing captions was paid an hourly wage of at least \$17.20 (the Minimum Hourly Wage).

(2) *Succeeding Years.* For each succeeding TRS Fund Year through June 30, 2029, the per-minute Supplemental Compensation Rate for CA-assisted IP CTS shall be determined in accordance with the following equation:

$$L_{FY} = L_{FY-1} * (1 + AF_{FY})$$

where L_{FY} is the CA-Assisted Compensation Level for the new Fund Year, L_{FY-1} is the CA-Assisted Compensation Level for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year, as defined by paragraph (b)(3) of this section. This rate shall be paid, in addition to the compensation defined in paragraph (b) of this section, for all compensable minutes of CA-assisted service provided by a Certified Provider for which the communications assistant producing captions was paid a Minimum Hourly Wage of at least the amount determined by the following equation:

$$W_{FY} = W_{FY-1} * (1 + AF_{FY})$$

where W_{FY} is the Minimum Hourly Wage for the new Fund Year, W_{FY-1} is the Minimum Hourly Wage for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year, as defined by paragraph (b)(3) of this section.

(3) *Verification and Offset.* The initial payment of Supplemental Compensation for CA-assisted IP CTS is a preliminary payment only and is conditional on subsequent verification by audit that the CAs producing captions for those minutes for which the supplement was paid actually were paid the hourly rate claimed by the provider. The Certified Provider is responsible for ensuring and documenting the accuracy of its representations to the TRS Fund administrator regarding the wages paid to each affected CA, whether such wages were paid by the Certified Provider or by a subcontractor. In such subsequent audit, if a Certified Provider fails to produce documentation, satisfactory to the TRS Fund administrator, verifying the hourly rate paid to affected CAs—whether employed by the Certified Provider or a subcontractor—then the administrator is entitled to immediately reclaim any prior payments of Supplemental Compensation for minutes handled by such CAs, by offsetting such prior payments against any amounts claimed in the provider's next monthly compensation request.

(d) *Exogenous Cost Adjustments.* In addition to the applicable per-minute Compensation Level, an IP CTS provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June

30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected IP CTS minutes for the Fund Year. An exogenous cost adjustment shall be paid if an IP CTS provider incurs well-documented costs that:

- (i) belong to a category of costs that the Commission has deemed allowable;
- (ii) result from new TRS requirements or other causes beyond the provider's control;
- (iii) are new costs that were not factored into the applicable compensation formula(s); and
- (iv) if unrecovered, would cause a provider's current allowable-expenses-plus-allowed-operating margin to exceed its revenues.

Appendix C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)* released in December 2022.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need For, and Objectives of, the Report and Order

2. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring Telecommunications Relay Services (TRS) are available to the extent possible and in the most efficient manner to individuals with disabilities.⁴ The Commission provides compensation for the provision of TRS through the TRS Fund.⁵ To determine the appropriate compensation, the Commission has adopted and periodically reviews a compensation plan for the provision of each form of TRS. Each compensation plan includes a compensation structure and formulas for determining the appropriate compensation, with various inputs, including a “reasonable cost” criteria and historical and expected demand for the provision of TRS.

3. To achieve these requirements, in the *Report and Order*, the Commission establishes multi-year compensation plans for Internet Protocol Captioned Telephone Service (IP CTS), a form of TRS that enables individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation.⁶ To provide the appropriate compensation for the provision of, and continued availability of IP CTS, the Commission adopts separate compensation levels for IP CTS using only automatic speech recognition technology (ASR-only IP CTS) and IP CTS provided with communications assistants (CA-assisted IP CTS). Establishing two compensation formulas gives the Commission the ability to encourage the provision of both ASR-only IP CTS and CA-assisted IP CTS, while limiting the burden to the TRS Fund.

4. For ASR-only IP CTS, the Commission adopts a compensation plan that reduces the ASR-only rate in stages, giving the Commission an opportunity to reassess the reasonable cost of ASR-only IP CTS, in light of future developments, before the rate actually reaches the cost-based level indicated by current cost data. For CA-assisted IP CTS, the Commission adopts a compensation plan that addresses cost changes due to inflation. The Commission also updates the reasonable cost criteria to improve the ability of IP CTS providers to provide and receive compensation for IP CTS, whether provided as ASR-only IP CTS or CA-assisted IP CTS. The Commission takes these steps to ensure the

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 *Internet Protocol Captioned Telephone Service Compensation; Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 22-408, 13-24, and 03-123, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97 (Dec 22, 2022) (*Notice*).

³ 5 U.S.C. § 604.

⁴ 47 U.S.C. § 225(b)(1). TRS are “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.” *Id.* § 225(a)(3).

⁵ 47 CFR § 64.604(c)(5)(iii).

⁶ 47 CFR § 64.601(a)(23). “With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the [I]nternet rather than the public switched telephone network.” *Id.*

provision of IP CTS in a functionally equivalent manner to persons who are deaf, hard of hearing, DeafBlind, or have speech disabilities.⁷ In doing so, the Commission balances several different factors including regulating the recovery of costs caused by the service, encouraging the use of existing technology and not discouraging or impairing the development of improved technology, and ensuring IP CTS is “available, to the extent possible and in the most efficient manner.”⁸

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA. However, CaptionMate and other small providers raised issues regarding the impact of the proposed rules on small entities. Specifically these providers urged the Commission to adopt a tiered rate structure for IP CTS similar to that found in the *2023 Video Relay Service (VRS) Order*, or alternatively, a separate rate for small providers.⁹ As detailed in the *Report and Order*, the market and structure for VRS are different than that of IP CTS. Therefore, the proposed rate structure for IP CTS or separate small provider rate are not justified and pose potential inefficiencies.¹⁰

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹¹ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵

⁷ 47 U.S.C. § 225(a)(3); 47 CFR § 64.601(a)(43).

⁸ 47 U.S.C. § 225.

⁹ CaptionMate Comments at 8; Letter from Joint IP CTS Providers (CaptionMate, Global Caption, Nagish, NExTalk and Rogervoice), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 22-408, 03-123, and 13-24 (filed May 31, 2024).

¹⁰ *Report and Order* Part III.C.1.

¹¹ 5 U.S.C. § 604(a)(3).

¹² *Id.* § 604(a)(4).

¹³ *Id.* § 601(6).

¹⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁵ 15 U.S.C. § 632.

8. The policies adopted in the *Report and Order* will affect obligations of IP CTS providers. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS providers. All Other Telecommunications is the closest industry with a SBA small business size standard. There are currently nine IP CTS providers.

9. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁶ 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.¹⁷ 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.¹⁸ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁹ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.²⁰ Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The provider compensation plan adopted in the *Report and Order* clarifies certain existing reporting, recordkeeping, and other compliance requirements for small entities. The adopted rules establish the compensation structure for IP CTS providers which may impose additional costs for small providers. The Commission retains the status quo of continuing to require IP CTS providers, including small providers, to file annual cost and demand data reports with the TRS Fund administrator. The Commission clarifies the data related to engineering, research and development, and communications assistant costs that shall be collected in the providers’ annual cost and demand data filing. While there are no new or additional burdens on IP CTS providers to file these reports, small entities may need to hire professionals to complete cost reports with new formulas and calculations such as the glidepath approach for the ASR-only formula for example, so that they may comply with the adopted rules. These calculations and reports must also be adjusted to include certain expenses that were previously not allowable, such as for research and development to enhance functional equivalence of IP CTS; the costs of acquiring North American Numbering Plan (NANP) telephone numbers; and the reasonable costs of developing, maintaining, and providing software and web-based applications that enable users to access IP CTS from off-the-shelf user devices running on widely available operating systems. Although the Commission allows IP CTS providers to recover reasonable costs for numbering, certain software, and certain research and development costs, these allowances do not change the cost categories reported by providers. When it is possible to directly assign costs to either ASR-only or CA-assisted IP CTS, providers must do so, and when that is not possible, they must reasonably allocate such costs based on direct analysis of the origin of the costs themselves.

¹⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

²⁰ *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.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities. . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”²¹

12. The adopted compensation structure and levels will apply only to entities which are, or may become, certified by the Commission to offer ASR-only IP CTS or CA-assisted IP CTS in accordance with the Commission’s rules.²² The Commission adopted these multi-year compensation levels to compensate providers for their reasonable cost of providing service, to reduce the burden on TRS Fund contributors and their subscribers, and to ensure that TRS is made available to the greatest extent possible and in the most efficient manner.²³ Among the steps taken to minimize significant impact on small and other entities is the adoption of separate compensation structures for ASR-only IP CTS and CA-assisted IP CTS based on their reported costs. The compensation for ASR-only IP CTS will be adjusted over a multi-year glide path. The CA-assisted rate will be subject to adjustment based on a factor that reasonably predicts whether relevant costs will rise or fall in the coming years. The compensation period will be effective for approximately five years, which is longer than the three year alternative proposed in the *Notice*, providing an incentive to improve efficiency and reassess formulas in response to unanticipated cost changes. These actions by the Commission should minimize the economic impact for small entities who provide IP CTS.

13. Through comments provided during the rulemaking proceeding, the Commission considered various proposals from small and other entities, and the adopted rules reflect its best efforts to minimize significant economic impact on small entities. Additionally, the Commission considered alternative proposals and weighed their benefits against their potential costs to small and other entities. More specifically, the Commission considered multiple methodologies for compensating IP CTS providers for the provisioning of ASR-only IP CTS and CA-assisted IP CTS, including the current unitary compensation structure and a tiered-rate structure. Given the significant cost difference between CA-assisted and ASR-only captioning, the Commission determined that a single rate at any level would tend to encourage use of the lower-cost ASR-only option, instead of the CA-assisted method that may result in better service for consumers in certain circumstances. Further, in considering a compensation structure, the Commission evaluated specific proposals for the structure and for setting compensation levels. For example, the Commission considered a proposal to adopt a tiered rate structure for IP CTS which suggested that smaller providers with relatively high per-minute costs should be supported by the TRS Fund to offer consumers more choice and to promote innovation.²⁴ However, the Commission did not find that market factors exist to justify tiered rates for small or other providers.

14. In the *Report and Order*, the Commission considered and adjusted the allowable cost categories that it used to determine the appropriate compensation levels for the provisioning of IP CTS to allow small and other providers to recover costs for research and development to enhance functional equivalence, access software, and numbering. These adjustments will help ensure that the provisioning of IP CTS is functionally equivalent. These alternative policy changes, which are adopted in response to comments in the record, help maintain a choice of service offerings for consumers from multiple providers of various sizes. The expansion of allowable cost categories reduces the burden on small and

²¹ 5 U.S.C. § 604(a)(6).

²² See 47 CFR § 64.606(a)(2)-(3), (b)(2).

²³ See 47 U.S.C. § 225(b)(1).

²⁴ See *supra* Part III.C.1.

other IP CTS providers to either incur these costs or reduce the quality of their service. Continuing to require that the allowable costs incurred must be reasonable provides the Commission with sufficient flexibility to ensure that the TRS Fund is not improperly burdened with unnecessary costs that could otherwise have an unintended impact on contributors to the TRS Fund. The Commission considered proposals to adjust costs based on effects of the pandemic on the labor market; however there was no persuasive evidence that these changes were substantial enough to make cost data for 2023 and 2024 unreliable. Further, delaying establishment of separate rates would incentivize providers to reduce use of CA-assisted IP CTS. Additionally, the Commission allowed for an inflation adjustment to reflect current economic realities that could otherwise impose an economic burden on CA-assisted IP CTS providers.

G. Report to Congress

15. 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.²⁵ 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*.²⁶

²⁵ See 5 U.S.C. § 801(a)(1)(A).

²⁶ *Id.* U.S.C. § 604(b).

**CONCURRING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Report and Order and Order (July 31, 2024).

Technological innovations are improving the lives of so many Americans, including individuals with hearing loss. One area where we are seeing this trend is in the market for services that enable individuals with hearing loss to communicate with others by reading captions that are generated during telephone calls. Historically, these captioning services required the participation of a third-party person, known as a communications assistant or CA, to generate the captions. But increasingly, providers of captioning services are generating them by using automatic speech recognition or ASR technologies. This trend is a good thing as it drives down the cost of providing the captioning service while breaking down barriers to innovative and new forms of competition.

In my view, the FCC should be operating consistent with this trend towards technological innovation. That does not mean that the FCC should stop supporting the continued use of CAs in the appropriate circumstances. But the FCC should not work against the pro-consumer movement towards greater reliance on technology either. For this reason, I put forward some ideas that I thought would strike a better balance in terms of the incentives the FCC creates today while ensuring that we manage this program in a fiscally responsible manner. While my specific suggestions did not make it into the final decision today, I appreciate that my colleagues have included changes that can help incentivize continued, long-term investment in ASR technologies. And in light of those changes, I will be concurring in today's decision.

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

In the Matter of	)	
	)	
Johnny Peralta	)	File No.: EB-FIELDNER-18-00026578
Bronx, New York	)	NAL/Acct No.: 202432010001
	)	FRN: 0034392233

FORFEITURE ORDER

Adopted: July 31, 2024**Released: August 1, 2024**

By the Commission:

1. We impose a penalty of \$2,316,034 against Johnny Peralta a/k/a Jhonny Peralta (Peralta), for operating an unauthorized radio station on 105.7 MHz in the Bronx, New York. Peralta has engaged in the longstanding illicit operation of an unauthorized radio station, known as “La Mia Radio.” Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather and other dangers to the public.² Some of the most egregious pirate radio operations are run by individuals who have ignored prior enforcement actions by the Commission. This is one such case. As such, it merits the strongest possible enforcement measures to the fullest extent of the law.

2. On November 16, 2023, the Commission issued a Notice of Apparent Liability for Forfeiture proposing a \$2,316,034 forfeiture against Peralta for willful and knowing violations of section 511 of the Act by engaging in pirate radio broadcasting.³ Peralta has not filed a response to the NAL.⁴ We incorporate by reference herein, affirm, and adopt as final all of our tentative findings of fact and conclusions of law set forth in the NAL and affirm the forfeiture proposed in the NAL.⁵

3. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission’s rules, 47 CFR § 1.80, Johnny Peralta is **LIABLE FOR A MONETARY FORFEITURE** in the amount of two million, three

¹ 47 U.S.C. § 511.

² See *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

³ See *Johnny Peralta, Bronx, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-99, 23 WL 9291566 (Nov. 16, 2023) (NAL); 47 U.S.C. § 511. The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

⁴ On January 30, 2024, a copy of the NAL was sent to Johnny Peralta by first class mail and certified mail, return receipt requested. Although the certified mailing was returned unclaimed, the first class mail was not returned.

⁵ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

hundred sixteen thousand, thirty-four dollars (\$2,316,034) for willfully and knowingly violating section 511 of the Act.

4. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. Peralta shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act, 47 U.S.C. § 504(a).

5. In order for Johnny Peralta to pay the proposed forfeiture, Johnny Peralta shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF." In addition, a completed Form 159⁷ or printed CORES form⁸ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number

⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁸ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁹ Instructions for completing the form may be obtained <http://www.fcc.gov/Forms/Form159/159.pdf>.

associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

6. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

7. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Johnny Peralta at {[REDACTED]} Marion Ave., Apt. 3, Bronx, New York 10458-3003.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

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

REPORT AND ORDER

Adopted: August 7, 2024

Released: August 8, 2024

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. Today we establish a dedicated Missing and Endangered Persons (MEP) event code to facilitate the more efficient and widespread dissemination of alerts and coordinated responses to incidents involving all missing and endangered persons—including Indigenous persons—across multiple jurisdictions. Adopting a dedicated MEP code will make EAS and WEA alerts a more effective tool for finding missing and endangered persons by notifying the public so they can assist in the search, as we have previously done for children and public safety officers. We also find that this action will support

Tribal and Indigenous communities that face a profound crisis of violence directed towards them and of missing, endangered, abducted, and murdered persons.

2. In 2023, more than 188,000 people who fall outside of the criteria for America’s Missing: Broadcast Emergency Response (AMBER) Alerts went missing in the United States.¹ The problem is acute in Tribal communities, where American Indian and Alaska Native people are at a disproportionate risk of violence, murder, or vanishing.² In response, Congress tasked the U.S. Department of the Interior and the U.S. Department of Justice (DOJ) to establish a joint commission, the Not Invisible Act Commission (NIAC), to focus on reducing violent crimes against American Indians and Alaska Natives.³ The NIAC’s responsibility is to identify, report, and respond to instances of missing and murdered Indigenous peoples (MMIP), as such cases have been historically underreported or misclassified.⁴

3. We therefore revise our Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) rules to adopt and implement the three-character code “MEP” as a new EAS event code. This will facilitate the delivery of alerts for missing and endangered person, including “Ashanti Alerts,” “Silver Alerts,” and other state-enacted alerts, such as “Feather Alerts,” over the EAS and WEA system.⁵ In so doing, we again promote public safety—similar to our efforts with AMBER Alerts—by providing law enforcement, EAS Participants, and WEA providers “with a means to quickly disseminate information pertaining to serious” missing and endangered persons cases.⁶

¹ According to the National Crime Information Center (NCIC), during 2023, roughly 563,000 persons were entered into its missing persons database. Of these entries, approximately 188,000 were 18 or older. As of December 31, 2023, there were 96,955 active missing person records, of which roughly 68,000 were 18 or older. None of these persons would have been subject to AMBER Alerts, which are limited to persons under 18. Further, although precise data on missing adults over the age of 65 are unavailable at this time, it is clear that many missing adults are under the age of 65. See 2023 NCIC Missing Person and Unidentified Person Statistics, <https://le.fbi.gov/file-repository/2023-ncic-missing-person-and-unidentified-person-statistics.pdf/view> (last visited Jun. 19, 2024). The estimate of approximately 188,000 does not include people under the age of 18 that may not meet the AMBER Alert criteria.

² The FBI reports that, in 2023, there were 10,650 entries for American Indian/Alaska Native (AI/AN) persons reported missing to NCIC. This is close to 2% of the total entries; AI/AN is estimated to be 1.1% of the overall U.S. population. Of those 10,650, 3,269 (approximately 30%) were 18 years old or older. See 2023 Missing American Indian and Alaska Native Persons: Age 21 and Under, FBI’s National Crime Information Center Missing Person File, <https://ojdp.ojp.gov/data/missing-american-indian-alaska-natives.pdf>. Black American missing persons data are equally alarming. In 2023, a total of 202,097 missing Black persons were reported to NCIC, or roughly 35% of the total number of entries. The Black population of the U.S. is approximately 12%. For comparison sake, White Americans, who comprise 70% of the U.S. population, accounted for 56% of the missing persons cases reported to NCIC in 2023. See 2023 NCIC Missing Person and Unidentified Person Statistics, <https://le.fbi.gov/file-repository/2023-ncic-missing-person-and-unidentified-person-statistics.pdf/view> (last visited Jun. 19, 2024). These and other data point to considerable challenges facing communities of color in the U.S. with respect to missing persons, giving rise to acknowledging the crisis in those communities. See “When a Black person goes missing, families say their cases get left behind,” PBS Newshour Report, May 31, 2024 (updated June 3, 2024) <https://www.pbs.org/newshour/nation/when-a-black-person-goes-missing-families-say-their-cases-get-left-behind>.

³ Public Law 116-166, Not Invisible Act of 2019, 134 Stat. 766, (2020). See also US Department of Interior, *Not One More: Findings and Recommendations of the Not Invisible Act Commission*, November 1, 2023, <https://www.justice.gov/otj/media/1322566/dl?inline> at 34 (“A 2021 report from the Government Accountability Office concluded that baseline data on the rates of murder or the number of missing persons from [American Indian/Alaskan Native] communities is difficult to obtain and the full scope of the problem remains unknown.”).

⁴ *Id.*

⁵ 47 CFR § 11.1 *et. seq.* (EAS); 47 CFR § 10.1 *et. seq.* (WEA).

⁶ See *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Report and Order, 17 FCC Rcd 4055, 4065, para. 20 (2002).

4. Our actions will also promote the development of compatible and integrated Ashanti Alert plans throughout the United States, consistent with the Ashanti Alert Act of 2018 (Ashanti Alert Act)⁷ and, thus, facilitate coordinated, nationwide law enforcement activity, pursuant to those plans, to locate missing and endangered persons with the goal of restoring them to their homes, families, and communities. And our action today is a crucial federal step in addressing the persistent crisis of missing, endangered, and murdered Indigenous and Black people in America.⁸

II. BACKGROUND

5. *Emergency Alert System.* The EAS is a national public warning system through which TV and radio broadcasters, cable systems, and other service providers (EAS Participants)⁹ deliver alerts to the public to warn it of impending emergencies and dangers to life and property.¹⁰ The primary purpose of the EAS is to furnish the President with “the capability to provide immediate communications and communications and information to the general public at the National, State and Local Area levels during periods of national emergency.”¹¹ The common usage of the EAS, however, is to distribute alerts issued

⁷ See Ashanti Alert Act of 2018, Pub L. 115-401, 132 Stat. 5339 (2018), codified at 34 U.S.C. § 21901, *et. seq.* Ashanti Alerts consist of the “voluntary dissemination of information to law enforcement, media and the public about missing adults who are endangered or abducted or who have special needs or circumstances.” DOJ, *Resource Basket for Law Enforcement, Emergency Alerts and Warning Systems*, <https://www.justice.gov/tribal/mmip/resources/law-enforcement> (last visited July 8, 2024).

⁸ See Bureau of Indian Affairs, “Missing and Murdered Indigenous People Crisis,” <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis> (last visited June 11, 2024) (“For decades, Native American and Alaska Native communities have struggled with high rates of assault, abduction, and murder of tribal members. Community advocates describe the crisis as a legacy of generations of government policies of forced removal, land seizures and violence inflicted on Native peoples.”).

⁹ The Commission’s rules currently define EAS Participants as analog radio broadcast stations, including AM, FM, and Low-power FM stations; digital audio broadcasting stations, including digital AM, FM, and Low-power FM stations; Class A television and Low-power TV stations; digital television broadcast stations, including digital Class A and digital Low-power TV stations; analog cable systems; digital cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. See 47 CFR § 11.11(a).

¹⁰ See *Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 32 FCC Rcd 10812, para. 2 (2017) (*BLU Report and Order*); *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). The first Notice of Proposed Rulemaking in docket ET No. 04-296 summarized the EAS. See *Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15776-77, paras. 6-8 (2004). In addition, the *Second Report and Order* provided an overview of the present organization and functioning of the system. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

¹¹ See 47 CFR § 11.1. Under the Part 11 rules, national activation of the EAS for a Presidential alert message, initiated by the transmission of an Emergency Action Notification (EAN) event code, is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the American public within 10 minutes from any location at any time and must take priority over any other alert message and preempt other alert messages in progress. See, e.g., *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18628, para. 8 (2005) (*First Report and Order*). See also, e.g., 47 CFR §§ 11.33(a)(11), 11.51(m), (n). Presidential alerts are mandatory for EAS Participants, as are certain system tests; all others are voluntary. See 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8.

by state and local governments, as well as by the National Weather Service (NWS), to the public.¹² The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level.¹³

6. EAS alerts are configured using the EAS Protocol, which utilizes fixed, three-character “event codes” (e.g., “CAE” signifies Child Abduction Emergency, “TOR” signifies Tornado Warning, and “FFW” signifies Flash Flood Warning) to describe the type of alert being sent. Additional data identifies other elements of an EAS alert, enabling the delivery of temporally- and geographically-targeted alerts to the public.¹⁴ EAS messages are distributed either through (i) a broadcast-based, hierarchical distribution system in which an alert message originator (“Alert Originator”) (e.g., State Governor’s offices, state/county/Tribal emergency management authorities, NWS, etc.) encodes (or arranges to have encoded) a message in the EAS Protocol,¹⁵ which is then broadcast from one or more EAS Participants and subsequently relayed, participant-to-participant, until all affected EAS Participants have received the alert and delivered it to the public;¹⁶ or (ii) an IP-based process over the Internet after

¹² See, e.g., *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 8149, 8152-53, para. 3 (2011).

¹³ The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. See 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee reprinted as Appendix K to Partnership for Public Warning Report 2004-1, *The Emergency Alert System (EAS): An Assessment*; Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995); and Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006).

¹⁴ See 47 CFR § 11.31(c), (e).

¹⁵ The EAS protocol provides very basic information about the emergency involved. See 47 CFR § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and “end of message” (EOM) codes. See *id.* § 11.31(a).

¹⁶ This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture. Because this EAS architecture has been in place since the inception of the EAS, it is also known as the “legacy EAS.” In legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant’s local audience but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives; if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity’s audience but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and delivered it to the public. See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Notice of Proposed Rulemaking, FCC 24-30, 2024 WL 1191983, at *2, paras. 4-5 (March 15, 2024) (*MEP NPRM*); *Fifth Report and Order*, 27 FCC Rcd at 646-47, paras. 6-7. At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points—specifically, State Primary stations and “State Relay” stations. See 47 CFR § 11.21. These monitoring pathways are set forth in State EAS Plans administered by State Emergency Communications Committees. See 47 CFR § 11.21.

formatting the alerts in the Common Alerting Protocol (CAP) and delivering them via the FEMA-administered Integrated Public Alert and Warning System (IPAWS).¹⁷

7. *Ashanti Alerts*. Enacted in 2018, the Ashanti Alert Act is named in honor of Ashanti Billie, a 19-year-old woman who was abducted in 2017 in Virginia and found dead in North Carolina.¹⁸ The Ashanti Alert Act requires a National Coordinator within DOJ (the Bureau of Justice Assistance (BJA)) to establish a national communications network to “provide assistance to regional and local search efforts for missing adults through the initiation, facilitation, and promotion of local elements of the network, in coordination with States, Indian Tribes, units of local government, law enforcement agencies, and other concerned entities with expertise in providing services to adults.”¹⁹ Ashanti Alerts are intended to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America’s Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts.²⁰

8. Under the Ashanti Alert Act, BJA, among other things, must work with “States and Indian Tribes to encourage the development of additional Ashanti Alert plans in their network” and “establish voluntary guidelines for States and Indian Tribes to use in developing Ashanti Alert plans that will promote compatible and integrated Ashanti Alert plans throughout the United States.”²¹ And, the BJA must coordinate and consult with the Commission and other federal agencies “in carrying out activities under” the Ashanti Alert Act, and also must “consult with local broadcasters and State, Tribal and local law enforcement agencies in establishing minimum standards [for issuance and dissemination of Ashanti Alerts] and in carrying out other activities” under the Ashanti Alert Act.²²

9. *Savanna’s Act*. Named for Savanna LaFontaine-Greywind, a pregnant member of the Spirit Lake Tribe found brutally murdered in the Red River of North Dakota in 2017,²³ Savanna’s Act clarifies federal, state, Tribal, and local law enforcement responsibilities for collecting and sharing data “related to missing or murdered Indian men, women, and children, regardless of where they reside . . . and directs U.S. attorneys to develop regionally appropriate guidelines for responding to missing or murdered

¹⁷ See 47 CFR § 11.56; see also *Fifth Report and Order*, 27 FCC Rcd at 644-45, para. 4. This process for distributing alerts to EAS Participants represents the “CAP-based” EAS. Both the legacy and CAP-based EAS architectures are designed so that EAS Participants deliver to the public the alert content they receive from the EAS sources they monitor. Further, the EAS architecture and equipment is designed to operate automatically, without intervention from the EAS Participant; this minimizes the risk of operator error and facilitates EAS operation at unattended stations. See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1822-23, paras. 103-104 (1994) (subsequent history omitted) (*1994 Report and Order*).

¹⁸ DOJ, Fact Sheet, *National Ashanti Alert Network* (July 2020) bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/National-Ashanti-Alert-Network-Fact-Sheet.pdf (*Ashanti Alert Fact Sheet*). Ashanti Alerts can provide for rapid dissemination of information to law enforcement agencies, media, and the public about adults who have been reported missing, along with suspect information. *Id.* These alerts are currently transmitted through a patchwork of notification systems with laws that vary based on jurisdiction, which can cause significant delay in the dissemination of the alerts.

¹⁹ Pub. Law 115-401 (2018) Sec. 202 (a).

²⁰ See 34 U.S.C. § 21901, *et. seq.* See also BJA, *Ashanti Alert Act National Notification System—Overview*, <https://bja.ojp.gov/program/ashanti-alert/overview> (last visited Feb. 5, 2024) (*Ashanti Alert Notification System Overview*); *Ashanti Alert Fact Sheet*.

²¹ See 34 U.S.C. § 21903(a), (b).

²² 34 U.S.C. § 21903(c).

²³ National Indigenous Women’s Resource Center, *Savanna’s Act Fact Sheet*, <https://www.niwr.org/sites/default/files/files/reports/Fact%20Sheet-Savanna%27s%20Act-New.pdf> (last visited Feb. 20, 2024). See also, 25 U.S.C. § 5701, *et. seq.*

Indians.”²⁴ Savanna’s Act further calls for establishing guidance for “best practices in conducting searches for missing persons on and off Indian land.”²⁵ Savanna’s Act brings attention to the need for law enforcement coordination in addressing violent crimes against American Indians and Alaska Natives.

10. *National Congress of American Indians’ Resolution.* In late 2023, Native Public Media sponsored a resolution calling for the Commission to establish an MEP event code to “enable a more rapid and coordinated response to incidents involving missing indigenous persons.”²⁶ NCAI Resolution #NO-23-001 states that “Native Americans face significant challenges in addressing the issue of missing and endangered adults, requiring immediate attention and action,” and that current EAS event codes fail to account for these unique missing person circumstances.²⁷ The NCAI further states that their “communities have historically been disproportionately affected by missing person cases, with Native Americans constituting 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population, as reported by the National Crime Information Center, underscoring the urgent need for targeted measures.”²⁸ The General Assembly of the National Congress of American Indians (NCAI) adopted this resolution in November 2023.²⁹

11. On January 29, 2024, the National Ashanti Alert Network Stakeholder Working Group and Pilot Project Participants Working Group (Ashanti Alert Working Groups) submitted comments that “noted a need for a missing and endangered person code that would supplement the current Child Abduction Emergency (CAE) and Blue Alert (BLU) IPAWS codes. Currently no code exists for missing and endangered persons,” which requires alerting agencies to use generic EAS event codes such as Local Area Emergency (LAE) or Law Enforcement Warning (LEW), when they issued an alert for a missing and endangered person.³⁰ In offering language for a missing and endangered persons event code, they used “person” and “persons.”³¹ Although Ashanti Alerts only apply to adults, the Ashanti Alert Working Groups specifically noted that they did not use “adult” in their proposed language “because alerting agencies have noted that not all missing children fit the criteria outlined for an AMBER alert and as such the MEP code could be utilized when CAE alert criteria [are] not met.”³²

12. *Post-MEP NPRM Tribal Consultation.* The Commission adopted the *MEP NPRM* on March 14, 2024, proposing to “revise the Commission’s EAS rules to add a new ‘MEP’ event code for all EAS alerts about missing and endangered person incidents that do not meet the criteria for an AMBER

²⁴ 25 U.S.C. § 5701.

²⁵ 25 U.S.C. § 5704.

²⁶ *Tribes, Native Public Media Urge FCC to Establish Missing and Endangered Event Code*, Navajo-Hopi Observer (Dec 15, 2023), <https://www.nhnews.com/news/2023/dec/05/guest-column-tribes-native-public-media-urge-fcc-e/>.

²⁷ National Congress of American Indians (NCAI), *To Establish a National Federal Communications Commission Event Code for Missing and Endangered Persons*, Resolution #NO-23-001 (2023), <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/5305.pdf>.

²⁸ *Id.*

²⁹ *Id.* The NCAI, according to Native Public Media, envision using the MEP event code to broadcast timely and critical alerts across the nation using IPAWS. *See id.*

³⁰ Ashanti Alert Working Groups Comments at 2. We note that the Stakeholder Working Group has representation from thirteen state agencies and two tribes: the Cherokee Nation Marshal Service and the Navajo Nation Office of Chief of Police. *Id.* at 3.

³¹ *Id.* at 2.

³² *Id.*

Alert.”³³ Consistent with Commission policy,³⁴ the Commission directed the Office of Native Affairs and Policy (ONAP) to coordinate government-to-government consultation with Tribal Nations about the topics raised in the *MEP NPRM*, including the proposal to add a new “MEP” event code and whether it should consider an additional dedicated EAS event code for missing Indigenous persons on and off Tribal land.”³⁵

13. Accordingly, ONAP arranged and participated in several consultation and listening sessions with leaders, representatives, and members of federally recognized Tribes and their communities.³⁶ The consultative events and related *ex parte* meetings took place in May and June 2024, both in person and virtually.³⁷ In the meetings, ONAP provided overviews of the Commission’s rulemaking processes and the *MEP NPRM*. Commission staff solicited feedback from Tribal participants and explained how Tribal participants could engage in the rulemaking process through comment submissions in the relevant dockets.

III. DISCUSSION

14. We find that the EAS is an effective mechanism for delivering emergency alerts, which may include alerts about missing and endangered persons. An MEP event code could be used for all EAS alerts about missing and endangered person incidents including those that meet the criteria for an Ashanti Alert and those involving persons who are under 18 yet do not already meet the criteria for an AMBER Alert.³⁸ We also find that a dedicated EAS event code for missing and endangered person alerts serves the public interest and advances state and Tribal initiatives to find missing and endangered persons. Accordingly, we create and add a dedicated MEP event code to the EAS Protocol. We also permit MEP alerts to be deployed via WEA using existing alerting methodologies and consistent with our WEA rules. Finally, we establish a period of 12 months from publication of this *Report and Order* in the *Federal Register*, both to enable the usage of the MEP EAS event code over EAS, and to enable the delivery of alerts over WEA.

A. Adopting an MEP Event Code Will Make EAS a More Effective Tool for Finding Missing and Endangered Persons Who Do Not Qualify for an AMBER Alert

15. We find, as virtually all commenters affirm,³⁹ that adopting an MEP event code will make the EAS a more effective tool for finding missing and endangered persons. FEMA, which “maintain[s]

³³ *MEP NPRM* at *5, para. 13.

³⁴ Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, 16 FCC Rcd 4078, 4081 (2000).

³⁵ *MEP NPRM* at *8, *11, paras. 24, 37.

³⁶ See, e.g., Dear Tribal Leader Letter from B. Kraus, Office of Native Affairs and Policy, April 30, 2024, “FCC Announces Tribal Consultation on Proposed Missing and Endangered Persons Emergency Alert System Code.”

³⁷ In-person Tribal consultations occurred in Phoenix, Arizona; Cherokee, North Carolina; and Wyandotte, Oklahoma. ONAP held a national virtual Tribal consultation on June 17, 2024. The Local Indigenous Leaders (LIL) of the National League of Cities and Native Public Media also met with CGB and ONAP staff to discuss the NPRM and related questions. Local Indigenous Leaders of the National League of Cities, June 13, 2024, *Ex Parte* Comments; Native Public Media, June 3, 2023, *Ex Parte* Comments.

³⁸ See *MEP NPRM* at *6, para. 16 (citing BJA’s Ashanti Alert Act criteria: “(1) individuals over the age of 17; (2) missing adults who have special needs or circumstances; and (3) missing adults who are endangered or who have been abducted or kidnapped”).

³⁹ See Native Public Media (NPM) Comments at 1; ACA Connects—America’s Communications Association (ACA Connects) and NTCA – The Rural Broadband Association (NTCA), (collectively, “ACA and NTCA”) Comments at 2; Federal Emergency Management Agency (FEMA) Comments at 3; Association of Public-Safety Communications Officials, International (APCO) Comments at 1; NCTA – The Internet & Television Association (NCTA) Comments at 1 (“members support efforts to improve and enhance EAS and do not oppose adoption of an MEP

(continued....)

the integrity” of IPAWS and, among other duties, “provid[es] guidance on the categories of public emergencies” meriting an alert, supports the creation of “a new event code to expand emergency messaging for MEPs that fall outside the current criteria of the AMBER Alert.”⁴⁰ FEMA lauds the EAS’ functionality and resiliency, and believes that implementation of an MEP event code in the same fashion as the CAE event code for AMBER Alerts presents “no constraints that would impede the EAS’s ability to contain the information required” for those alerts.⁴¹ This position accords with the views of industry and public safety commenters who also support implementation of the MEP event code.⁴²

16. We also find the views of Tribal and Indigenous communities supporting this action particularly compelling. These communities face a profound crisis of missing, endangered, abducted, and murdered persons.⁴³ As one Native American commenter pointed out, “the MEP event code can be actively deployed to reach remote and underserved tribal communities, ensuring swift and efficient dissemination of critical information.”⁴⁴ Coordinated, often multi-jurisdictional law enforcement search,

event code”); United South and Eastern Tribes, Inc. (USET) Comments at 2-3; Nevada Coalition to END Domestic and Sexual Violence (NCEDSV) Comments at 1-2; Planned Parenthood Votes Nevada Comments at 1; National Tribal Telecommunications Association (NTTA) Comments at 2; Southern Ute Indian Tribe Comments at 2; The Navajo Nation Comments at 2; Comments of Richard Alun Davis at 1. *But see* Seattle Indian Health Board (SIHB) and Urban Indian Health Institute (UIHI) Comments at 1 (advocating against a generically designated “MEP” code and preferring, instead, a code “specifically identif[y]ing the AI/AN population for which it is intended”).

⁴⁰ FEMA Comments at 1-2 and 3 (citations omitted).

⁴¹ *Id.* at 5. Indeed, FEMA concludes the “proposed rule would promote stronger nationwide coordination on alerting for MEPs, address the existing discrepancies in alerts between different jurisdictions, mitigate public confusion on the meaning of various alerts, and ensure that federal rules and regulations cover more cases of MEPs.” *Id.* at 3.

⁴² For example, ACA Connects—America’s Communications Association (ACA Connects) and NTCA (collectively, “ACA and NTCA”) “agree that ‘optimiz[ing] regional and nationwide search efforts for missing, endangered, or abducted persons’ is an ‘important public policy objective’ worth pursuing.” ACA and NTCA Comments at 2. Likewise, the Association of Public-Safety Communications Officials International (APCO), “supports the [MEP EAS event code] proposal, and asserts that “[e]stablishing the MEP event code will facilitate consistency, which will simplify the development of standard operating procedures, support collaboration between jurisdictions, and facilitate the rapid and coordinated delivery of alert notifications about missing and endangered persons to the public in a uniform manner.” APCO Comments at 1. *See also* CTIA Comments at 2 (“CTIA supports the Commission’s efforts to enhance the WEA system [i.e., as adjunct to adopting the MEP EAS event code] to aid missing and endangered persons”); Planned Parenthood Votes Nevada Comments at 1 (“strongly support[ing] the FCC’s proposal to adopt the new MEP event code for the transmission of ‘ASHANTI [A]lerts’ through the Emergency Alert System (EAS)”); Brian Brashier’s Comments at 1 (“I know that the CAE (AMBER Alert) Code has been proven to assist first responders in locating children and thus, saving lives. I believe the establishment of an EAS code for Missing and Endangered adults will produce the same results[.]”).

⁴³ *See* NPM Comments at 4 (citing National Crime Information Center missing persons data to conclude that “[t]he disproportionate number of missing and murdered indigenous women and girls tells a grim and gut-wrenching story that demands urgent action. For far too long, tribal communities have faced an epidemic of violence and disappearances that has gone largely unnoticed by the broader public.”); Southern Ute Indian Tribe Comments at 1-2 (“While indigenous people only make up approximately two percent of the population they make up the second highest number of reported persons”) (footnote citation omitted); Navajo Nation Reply Comments at 1-2 (describing a 2023 scam operation involving, among other things, human trafficking that targeted Native American Communities, including the Navajo Nation); USET Comments at 3 (“Tribal citizens . . . are disproportionately affected by instances of violence and abduction”); Planned Parenthood Votes Nevada Comments at 1 (“American Indian and Alaska Native people face a disproportionately high risk of violence and abduction”); NTTA Comments at 3 (quoting the Not Invisible Act Commissioner’s Report’s statement: “There is a crisis in Tribal communities. A crisis of violence, a crisis of abuse, and a crisis of abject neglect affecting Indian Women & Men, Indian Children, and Indian Elders.”).

⁴⁴ NPM Comments at 5.

rescue, and recovery activities enhanced by an MEP EAS event code could have enormous life-saving value for AI/AN people as well as persons of color.⁴⁵

17. Comments associated with the FCC's Tribal consultations and *ex parte* meetings also resoundingly support adding the proposed MEP event code to EAS, which could then be sent using a WEA, which is seen as "a tool that would assist in recovery of missing and endangered persons" and, indeed, could "speed up the process to disseminate missing persons alerts."⁴⁶ Comparing the proposed MEP code to AMBER Alerts, commenters expressed hope that the MEP code would be as effective as AMBER Alerts have been in helping to locate missing and endangered children.⁴⁷ Another noted that the lack of a national EAS alert code for missing and endangered adults is "one of the biggest barriers to the recovery of missing and endangered Indigenous people."⁴⁸

18. We find that it is in the public interest, as the vast majority of other commenters support, to facilitate notifications for all missing and endangered people, including AI/AN people, using the existing EAS mechanism.

19. *Technical and operational feasibility.* We find that it is technically and operationally feasible to send MEP alerts using the EAS. As FEMA observes in supporting our proposed use of EAS to deliver MEP alerts nationally, the EAS and the "alerting ecosystem" in which it operates "is the broadest and most resilient system for relaying emergency messages" and, indeed, there will be "no constraints that would impede the EAS's ability" to function as proposed by the Commission.⁴⁹ The Navajo Nation, citing its own experience with Ashanti Alerts for Navajo people, asserts that "there are no constraints in the ability to send out imperative information through EAS under the Ashanti Alert."⁵⁰ We agree, and we further observe that no commenter has suggested otherwise.

⁴⁵ Native Public Media (NPM), for example, "strongly supports" the MEP EAS event code for multiple reasons, viewing it as a "critical step in addressing the crisis of missing and murdered indigenous persons, particularly women and girls." NPM Comments at 1. Similarly, the United South and Eastern Tribes, Inc. (USET) "fully support[] the adoption of an MEP event code in the EAS to coordinate Tribal and non-Tribal public safety agency response to an MEP alert," and note the reality that, when crimes take place on Tribal land, "the legal jurisprudence created by the United States requires a time consuming and complicated analysis necessary to determine who has jurisdiction." USET Comments at 2. Black American missing persons data, *see* n. 3, *supra*, also point to a crisis in that community; we expect the MEP event code adopted today to help alleviate that crisis as well. *See also* "When a Black person goes missing, families say their cases get left behind," PBS Newshour Report, May 31, 2024 (updated June 3, 2024) <https://www.pbs.org/newshour/nation/when-a-black-person-goes-missing-families-say-their-cases-get-left-behind>.

⁴⁶ Wyandotte Consultation, June 10, 2024 *Ex Parte* Comments at 1. *See also* Cherokee Consultation, June 10, 2024 *Ex Parte* Comments at 1 ("The Tribal Representatives at the consultation expressed support for the adoption of a dedicated code for missing and endangered persons to the EAS and WEA system."); Local Indigenous Leaders of the National League of Cities Consultation, June 13, 2024, *Ex Parte* Comments at 2-3. ("Another participant recognized that there are a multiple similar State and jurisdictional codes and related requirements for issuing these types of alerts. The participant expressed support for the FCC's proposal for a national emergency alert code for missing and endangered persons and it would be beneficial to 'get it all under one roof.'"); Phoenix Consultation, June 13, 2024 *Ex Parte* Comments at 1-2 (Tribal representatives "expressed support for the addition of a MEP code to the EAS and WEA system as a tool that would assist in the recovery of missing and endangered persons" and hoped for implementation "sooner than later." One participant explained that "because there is no EAS code for missing adults, family of missing Tribal members resort to ineffective posts on social media, and expressed their hope that an MEP EAS code would be far more effective in locating missing and endangered persons.").

⁴⁷ Wyandotte Consultation *Ex Parte* Comments at 1.

⁴⁸ Phoenix Consultation *Ex Parte* Comments at 2.

⁴⁹ FEMA Comments at 5.

⁵⁰ Navajo Nation Comments at 2-3.

20. *Geographic Requirements.* We find that the code we adopt today strikes a proper balance between the need to avoid the deleterious effects of alerting misuse or overuse through appropriate geo-location while ensuring sufficient scope to aid location and recovery of missing and endangered persons. EAS's effectiveness in managing the geographic targeting required for Blue Alerts (BLU) and AMBER Alerts (CAE), which the Commission acknowledged in the *BLU Report and Order*,⁵¹ warrants a conclusion that the EAS will be similarly effective for alerts using the MEP event code. That effectiveness, in turn, will both advance the critical policy goal of finding and recovering missing and endangered persons, and enhancing the public's trust in emergency alerts by avoiding unnecessarily broad activations that might contribute to warning fatigue.⁵²

21. We expect that EAS Participants can and will accommodate both micro- and macro-area geographic alerting in the context of missing and endangered person alerts, as they do for Blue Alerts and AMBER Alerts now. Of course, as is the case already with Blue and AMBER alerts, geographic scope will be based on the Alert Originators' inputs concerning the "emergency prompting" the alert. That is a matter of law enforcement discretion in originating and cascading the alert,⁵³ of course, not an issue of whether the requirement poses technical feasibility challenges to the EAS, however broad or narrow that scope input may be at origination.⁵⁴

22. *IPAWS and Legacy EAS.* We agree with commenters such as FEMA and the Navajo Nation that EAS MEP Alerts sent via both the IPAWS and the legacy EAS broadcast "daisy chain" will provide the fullest possible support for MEP transmissions.⁵⁵ We see no discrepancy between the two delivery mechanisms material enough to prevent us from adopting the MEP event code as proposed.

⁵¹ See *BLU Report and Order*, 32 FCC Rcd at 10815-16, para. 8.

⁵² See *BLU Report and Order*, 32 FCC Rcd at 10815, para. 8, n.29 (citing APCO's comments in the *Blue Alert NPRM* proceeding that "effective geo-targeting is important to preserve the public's trust in emergency alerts," and the City of New York's comments supporting "limiting the targeted geographic areas of Blue Alerts to the maximum extent practicable due to concerns that regional transmission [of alerts] may cause unnecessary activation of EAS and contribute to warning fatigue").

⁵³ ACA and NTCA argue that it should be made "clear that it is the responsibility of the alert originator to define the geographic scope of an Ashanti Alert consistent with this requirement, and that cable operators and other EAS Participants may simply pass through Ashanti Alerts as they do other alerts." ACA and NTCA Comments at 3, n.7. We agree that the alert originator, possessing the facts associated with a given missing and endangered person emergency, bears the responsibility for entering adequate information to establish the proper geographic scope of the missing and endangered person alert to be transmitted via the EAS using its FIPS and other coding.

⁵⁴ Like Blue and AMBER Alerts, missing and endangered person alerts will have nationwide coverage potential, depending upon the initial geographical inputs of Alert Originators and the evolving set of professionals and stakeholders (state alerts coordinators, law enforcement agencies, emergency management agencies, state agency partners (i.e. state department of transportation), fusion centers, and broadcasters) needed to respond to or assist with an event. See Bureau of Justice Assistance, "Alerts Save Lives: A Unified Message Regarding the Need to Support Nationwide Alerts," https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/alerts_save_lives-0718.pdf (last visited June 19, 2024) (Nationwide law enforcement "issue alerts to the public, media, and law enforcement and public safety partners via federal emergency alert systems, broadcasters, highway changeable message signs, and other notification systems when a person's life is in danger and time is of the essence. This includes situations like a child abduction emergency, a violent criminal posing an imminent threat to law enforcement and the community, or a missing and endangered person.") AMBER Alerts, Blue Alerts, Ashanti Alerts, and other missing and endangered person alerts we enable today through adoption of the MEP event code are part of the nationwide alerting supported by EAS and WEA.

⁵⁵ See FEMA Comments at 5 ("If the FCC creates the new event code for MEPs following the same approach as the [AMBER Alert] CAE event code, FEMA believes there will be no constraints that would impede the EAS's ability to contain the information required"); USET Comments at 2 ("USET firmly believes that all federally administered and funded alert systems must have the capability to transmit these events. Therefore, we support continued use of the EAS 'daisy chain' distribution architecture as well as the use of IP-based processes . . . for transmission under

(continued....)

23. As the Commission previously noted: “additional information cannot be relayed when CAP alerts are converted into legacy alerts for further distribution over the legacy EAS,⁵⁶ all data other than the header codes [and the audio reading of the alert] are lost in this conversion process.”⁵⁷ To address this issue, the Commission required EAS Participants to check for CAP-formatted messages when they receive state or local alert messages in legacy format, and if the same alert is available in CAP format, to relay the CAP version instead.⁵⁸ As a result, the benefits of the CAP formatted alert should always be available unless IPAWS is inaccessible, in which case the legacy format will still provide the audio description of the alert.

B. A Dedicated MEP EAS Event Code is in the Public Interest

24. We add the dedicated MEP event code to the EAS to advance the public interest and the purposes of the Ashanti Alert Act.⁵⁹ We believe that a dedicated EAS event code that expands MEP emergency messaging that fall outside the scope of AMBER Alerts will promote stronger nationwide coordination on Ashanti Alerts and other missing and endangered person alerts. It will also address jurisdictional alerting discrepancies, mitigate public confusion with respect to the meaning of various alerts, and ensure that more missing and endangered persons cases will be covered by the federal emergency communications system. In the end, we believe, this dedicated EAS event code will “help save lives of [missing and endangered persons] across the United States and Tribal Nations.”⁶⁰

25. Moreover, adding missing and endangered person alerts to EAS will advance the important public policy objective of “encouraging states, territories, and Tribal governments to develop or enhance existing missing and endangered person and Ashanti Alert plans to optimize regional and

IPAWS.”); Navajo Nation Comments at 3 (asserting that “there are no constraints in the ability to send out imperative information through EAS under the Ashanti Alert [Act] . . . the Nation does have criteria similar to the Ashanti Alert and it can be communicated within two-minutes through the daisy chain that is provided by [the] Everbridge software the Nation obtains,” but also noting that the Nation “does not send EAS alerts routinely with extra rich text”); NPM Comments at 12 (“IPAWS enables federal, state, tribal, territorial, and local authorities to alert their communities about serious emergencies from a single interface. In delivering critical information to the public, IPAWS leverages” the EAS, WEA and “other public alerting systems.”).

⁵⁶ “For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.” *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844, 11846, para. 6, n. 5 (2022) (*2022 EAS Accessibility Report and Order*).

⁵⁷ See *2022 EAS Accessibility Report and Order*, 37 FCC Rcd at 11846, para. 6.

⁵⁸ See *id.*, 37 FCC Rcd at 11847-48, para. 10.

⁵⁹ 47 CFR § 11.31(e).

⁶⁰ See FEMA Comments at 3. Indeed, we share FEMA’s AMBER Alert experience-based view—which shows that 73% of children are located within three hours following the issuance of an AMBER Alert—about the potential success of the MEP event code for missing and endangered adult persons using protocols similar to AMBER Alerts. *Id.* at 3-4. See also NPM Comments at 13 (stating that “the MEP code established within EAS would provide a clear, consistent trigger for issuing alerts across all participating media outlets and platforms. Standardizing criteria for activation would be nationwide, ensuring a baseline level of urgency and response regardless of location. . . . The benefits of such a system would be profound. It would send a clear message that the safety and well-being of our missing and endangered adults—including [Missing Murdered Indigenous Women and Girls]—is a national priority, not a regional afterthought.”); NTTA Comments at 4 (“There is little or no doubt that a dedicated alert code of this type will save lives and will therefore greatly exceed any nationwide implementation costs.”); Navajo Nation Comments at 3 (“The Nation strongly believes that this MEP code would save lives if introduced.”); USET Comments at 3 (USET SPF believes that “adoption of a MEP EAS event code will help save lives, especially Tribal citizens who are disproportionately affected by instances of violence and abduction”); Planned Parenthood Votes Nevada Comments at 1; NCEDSV Comments at 2; ACA and NTCA Comments at 2.

nationwide search efforts for missing, endangered, or abducted persons.”⁶¹ This is so, we believe, because of the expected results; the persons who are saved, found, and reunited with their families and communities may encourage policy makers and law enforcement stakeholders to embrace EAS-enabled efficiencies in existing plans and, where no such plans exist, to construct them to serve their communities. In this regard, we agree with FEMA, which asserts that the new MEP EAS event code would “promote stronger nationwide coordination” with respect to handling missing and endangered persons alerts, and also would “address the discrepancies in alerts between different jurisdictions” and help save the lives of missing and endangered persons.⁶²

26. We conclude that alert originators may use the MEP event code for all missing and/or endangered people alerts that do not qualify for an AMBER alert, whether that is because the missing and/or endangered person is over 17 or does not meet other criteria for issuing an AMBER alert. As FEMA observes, expanding emergency messaging for MEPs that fall outside of the criteria of an AMBER Alert, “would promote stronger nationwide coordination on alerting for MEPs, address the existing discrepancies in alerts between different jurisdictions, mitigate public confusion on the meaning of various alerts, and ensure that federal rules and regulations cover more cases of MEPs.”⁶³ FEMA notes that its research “shows that more than forty missing and endangered alert names lack uniformity in alert criteria and/or requirements and can create public confusion, especially when traveling from state to state.”⁶⁴ We agree with FEMA that establishing a dedicated MEP code “will contribute to a national unified messaging approach to finding MEPs.”⁶⁵

27. We also find that this will further the goals of the Ashanti Alert Act. In their request for an MEP event code, the Ashanti Alert Working Groups offered a definition for an MEP code that uses “person” or “persons,” but not “adult.” To emphasize this point they write: “Note that the term adult is not added within this warning to differentiate same from CAE [the event code for AMBER Alerts] alerts because alerting agencies have noted that not all missing children fit the criteria outlined for an AMBER alert and as such the MEP code could be utilized when CAE alert criteria [are] not met.”⁶⁶ We agree with the Ashanti Alert Working Groups and other commenters who argue that an MEP event code should be

⁶¹ *MEP NPRM* at *1, para. 2. In this regard, we observed the large number of Ashanti Alert, or Ashanti Alert-compliant Plans nationwide, and asked whether “a dedicated EAS event code [would] help ensure that Ashanti Alerts and related outreach are undertaken in a consistent manner nationally[.]” *Id.* at para. 21.

⁶² FEMA Comments at 3. FEMA’s own IPAWS AMBER Alert-related research on the status of the nation’s missing and endangered person alert systems has revealed, among other things, “more than forty missing and endangered alert names lack[ing] uniformity in alert criteria and/or requirements . . . creat[ing] public confusion, especially when traveling from state to state.” *Id.* In FEMA’s view, a “dedicated EAS event code for MEPs,” along with the expected “subsequent policy, guidance, socialization, and public awareness campaigns,” would “contribute to a national unified messaging approach to finding MEPs.” Similarly, APCO believes that establishment and implementation of the proposed MEP EAS event code “will facilitate consistency” for missing persons alerts nationwide, “which will simplify the development of standard operating procedures, support collaboration between jurisdictions, and facilitate the rapid and coordinated delivery of alert notifications about missing and endangered persons to the public in a uniform manner.” APCO’s Comments at 1-2. We share APCO’s and FEMA’s outlook, and expect today’s action to serve as a critical step toward “a practical national approach” in addressing missing and endangered person events. *See id.* at 3-4. In this regard, we note, and will rely upon, FEMA’s pledge “to work closely with the FCC to inform and empower jurisdictions to use the MEP event code effectively and educate the public on its purpose and value.” *Id.* at 5.

⁶³ FEMA Comments at 3.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Ashanti Alert Working Groups Comments at 2.

able to be used for all missing and endangered person alerts that do not qualify for an AMBER Alert.⁶⁷ Providing the broadest parameters for an MEP event code will grant maximum flexibility to alerting authorities trying to find missing and endangered persons, including Tribal alert originators who may not want to be constrained by the Ashanti Alert criteria when using the EAS and WEA to find missing and/or endangered members of their community.

28. *Tribal and Indigenous Voices.* Tribal leaders, representatives, organizations and members also believe the MEP event code will lead to optimization of existing missing and endangered persons plans and encouragement of plan development throughout the nation. USET states that “adoption of MEP as a dedicated EAS event code would encourage EAS Participants to deliver missing and endangered persons and Ashanti Alert[s]” nationwide, “thereby facilitating the work of the National Ashanti Alert Network.”⁶⁸ USET also agrees that the MEP event code would promote “nationwide adoption and expansion of Ashanti Alerts while [] ensuring that missing and endangered persons that don’t meet the criteria of AMBER Alerts . . . are appropriately transmitted to the public.”⁶⁹ Similarly, the Navajo Nation commends the EAS as “extremely efficient and effective” in its experience using it and WEA.⁷⁰

29. NPM extols IPAWS and asserts that “the MEP code established within EAS would provide a clear, consistent trigger for issuing alerts across all participating media outlets and platforms.”⁷¹ NPM further believes that “[s]tandardizing criteria for activation [by way of EAS and IPAWS] would be nationwide, ensuring a baseline level of urgency and response regardless of location.”⁷²

30. Commenters, including FEMA, industry, and Tribal voices support an EAS event code solely dedicated to MEP alerts. These commenters agree it will promote and catalyze uniformity with respect to efforts to locate and recover missing and endangered persons, promote the creation of Ashanti

⁶⁷ See Comments of Alfred Bagdonas at 1 (“WEA and EAS MEP code is definitely needed. It should not be restricted by age . . . As an example, it could be critical for use when a missing autistic 10 year old child has walked away during severe weather. This does not qualify as a CAE, nor would it meet the age restrictions of the Ashanti Act.”).

⁶⁸ USET Comments at 2-3.

⁶⁹ *Id.* at 3.

⁷⁰ Navajo Nation Comments at 2 (“The MEP code would be of great assistance with missing and endangered person alerts. Currently there are no constraints in the ability to send out imperative information through EAS under the Ashanti Alert.”).

⁷¹ NPM Comments at 12. See also NTTA Comments at 2 (asserting that the MEP code would be “designed to bridge the gap between AMBER and Silver Alerts” and, as such, would “have the potential of saving numerous lives”).

⁷² *Id.* at 12-13. Indeed, NTTA believes the NPRM presents a “compelling case” for a dedicated MEP EAS event code to address the “sizeable gap between . . . AMBER Alerts . . . and Silver Alerts” nationwide. See NTTA Comments at 3 (and adding that “there is no national code dedicated to missing Indigenous persons, although such a system has been under consideration for nearly five years. This gap must be addressed.”). See also Comments of Kyler Edsitty (describing the MEP code as part of an “holistic approach” to providing “critical nation-wide assistance to individuals who may be experiencing distress or imminent danger” that “underscores . . . commitment to addressing the underlying factors that may contribute to their disappearance, ultimately promoting a more compassionate and effective response to such situations in Indian Country”); NPM Comments at 13. That said, NPM calls for substantive steps, with the encouragement and support of the Commission, to empower Tribes *in their own efforts* to combat the “epidemic of missing and murdered indigenous persons, particularly women and girls.” *Id.* at 14. Indeed, NPM asks the Commission to delegate to ONAP the “role of reaching out to tribes, encouraging them to assume the role of an IPAWS Alerting Authority for their respective jurisdictions, and providing the support they may need to do so.” *Id.* Based on FEMA’s comments, we believe FEMA would support such an effort. See FEMA Comments at 5 (“FEMA aims to work closely with the FCC to inform and empower jurisdictions to use the MEP event code effectively and educate the public on its purpose and value”).

Alert Plans and Ashanti Alert-compliant Plans where they may not currently exist, and aid the integration of such plans into a coordinated national framework consistent with the Ashanti Alert Act's stated goals.

31. We believe that adoption of a single MEP code is appropriate at this time.⁷³ Although nearly all AI/AN, Tribal, and Indigenous commenters favored swiftly moving forward with an MEP EAS event code as principally proposed in the *MEP NPRM*,⁷⁴ some favor a Tribal-specific MIP (Missing Indigenous Person) or similar event code for EAS soon thereafter, while others call for only an MIP event code and others call for only an MEP event code.⁷⁵ We believe a single MEP event code will advance the cause of aiding in the rescue of Native persons and will monitor implementation of the new event code to make sure that is the case.

C. WEA Delivery of MEP Alerts

32. We permit MEP alerts to be deployed via WEA using existing alerting methodologies and consistent with our WEA rules. We believe that using the existing technologies will ensure a swift implementation of the new code. We thus agree with CTIA's and the Alliance for Telecommunications Industry Solutions' (ATIS') suggestion that we use an existing WEA classification⁷⁶ to achieve our alerting goals here. In addition, we agree with those commenters addressing the question that the logical WEA alert class choices are the Imminent Threat class and the Public Safety Message alert class.⁷⁷

33. We observed in the *MEP NPRM* that the WEA system is a "tool for authorized federal, state, local and Tribal government[s]" to provide geographically targeted alerts and warnings to WEA-

⁷³ See Phoenix Tribal Consultation *Ex Parte* at 2-3 (One participant explained that there is a need for uniformity across the country, including tribal lands and reservations. This participant opined that an MEP code "needs to be for all Americans," explaining that "even though tribes are disproportionately affected," a unique code for one tribe, for example, if different than another tribe, would mean tribes "can't talk to each other.").

⁷⁴ See, e.g., NPM Comments at 1; USET Comments at 3; Navajo Nation Comments at 2-3; NTTA Comments at 2; Lighthouse Police Department Comments at 1; Chris Bedeau Comments at 1; NCAI Comments at 3 (containing resolution urgently calling for MEP code to be established); Kyler Edsitty Comments at 1; Cherokee Tribal Consultation *Ex Parte* at 1; Wyandotte Tribal Consultation *Ex Parte* at 1.

⁷⁵ USET falls into this last category, expressing its belief that "an additional EAS event code [does not need] to be developed for missing or endangered persons on or off Tribal Lands" and preferring, instead, "adoption of a[n] MEP EAS event code that can broadly capture and transmit the necessary information to alert the public about missing and endangered persons in a specified geographic area." USET Comments at 3. The Seattle Indian Health Board and the Urban Indian Health Institute, on the other hand, argue that the proposed EAS event code will *not* aid in cases involving missing AI/AN people *unless* it is named in a manner that "specifically identifies the AI/AN population." SIHB and UIHI Comments at 1. We do not read SIHB's comments to express opposition to the implementation of a dedicated EAS event code for missing and endangered persons generally, or to express support for such a code only to be used for AI/AN people and not others. Rather, we read it plainly as a desire to ensure that, if the code is designed to aid in cases "involving a missing American Indian and/or Alaska Native," it should be named accordingly. The Commission recognized the crisis of missing and endangered Indigenous people in the *MEP NPRM*; however, we also recognize that the MEP code will help recover missing and endangered persons in other affected communities, including persons with mental or physical disabilities. Additionally, adopting an MEP code does not preclude local jurisdictions, including Tribal Nations, from using the MEP code to disseminate various alerts that identify specific populations of concern that fall within the MEP code criteria. See *MEP NPRM* at *1, para. 1 ("[W]e initiate a proceeding to . . . adopt a new EAS event code for Missing and Endangered Persons 'MEP.' . . . While of a *widespread concern*, this issue is particularly prevalent in Tribal communities. . . . With this proposal to establish a dedicated MEP event code, the FCC is taking a step to facilitate the more efficient and widespread dissemination of alerts and coordinated responses to incidents involving *all* missing and endangered persons—including Indigenous persons—across multiple jurisdictions.") (emphases added).

⁷⁶ CTIA Comments at 2-3. See ATIS Comments at 2-3.

⁷⁷ See APCO Comments at 2; CTIA Comments at 4-6.

capable mobile devices of participating commercial mobile service (CMS) providers' subscribers.⁷⁸ However, WEA "does not use event codes" like the EAS; rather, EAS alert origination software and FEMA IPAWS 'map' EAS event codes onto WEA handling codes corresponding to the alert message classifications the Commission has authorized for issuance over WEA.⁷⁹ These classifications, currently, are National Alert, Imminent Threat Alert, AMBER Alert, and Public Safety Message.⁸⁰

34. We agree with ATIS that there would be no "technical impacts to Commercial Mobile Service Provider (CMSP) networks or mobile devices if the EAS MEP event code is mapped to any existing WEA alert class."⁸¹ As ATIS notes, the required mapping would "occur prior to the arrival of the alert message at the CMSP network," and there would be no need for device modifications to reflect any "user choice for opting in/out because all existing alert classes are already represented in the device WEA menus."⁸² We also agree with CTIA that using an "existing alert class to implement any MEP alert will help avoid costly changes and potential backwards compatibility issues to handsets and Participating CMSP networks, as well as costly and time-consuming end-to-end testing and new device roll-out—all of which would delay the availability of the alert."⁸³

35. In the *BLU Report and Order*, we declined to adopt a new alert classification for Blue Alerts⁸⁴ and further chose not to specify one of the existing WEA classifications for Blue Alerts.⁸⁵ Instead, we left these issues "teed up in the *Blue Alert NPRM*" proceeding . . . to help gather additional information on this issue beyond what the record currently contains."⁸⁶ We chose this temporary course in order to "reduce the necessary time for Blue Alerts to become available on WEA, and [to] reduce the costs to WEA stakeholders," i.e., of establishing a new classification.⁸⁷ We do so again here.

D. Implementation Schedule

36. In the *MEP NPRM*, the Commission sought comment on the timeframe "in which MEP as a dedicated EAS event code for missing and endangered person alerts, including Ashanti Alerts, could

⁷⁸ *MEP NPRM* at *10, para. 30.

⁷⁹ *Id.*

⁸⁰ See 47 CFR § 10.400.

⁸¹ ATIS Comments at 2-3.

⁸² *Id.* That said, and as CTIA recommends, CTIA Comments at 3, we believe that implementation of an MEP event code also "should include secure Alert Originator authentication in the [IPAWS] and be accompanied by education for consumers and Alert Originators to support consistent alert handling and avoid alert fatigue and opt-outs by consumers." In this regard, we will defer to FEMA to ensure such authentication and education, consistent with FEMA's assurances that it will "work[] with the FCC, the broadcast industry, Alert Originators, and relevant stakeholders" for successful implementation of the new MEP event code. FEMA Comments at 4.

⁸³ *Id.* at 3-4. The introduction of a new alert class, on the other hand, "would require potentially significant updates" to the applicable wireless technical "standards, devices, Participating CMSP networks, as well as extensive end-to-end testing." *Id.* See also ATIS Comments at 3-4 (explaining that modifications and other changes driven by establishing a new WEA alert class for the proposed MEP code, e.g., CAP changes, interface updates between FEMA IPAWS and CMSP networks, other interface changes and modifications to ATIS' standards, "would significantly increase testing time, as the signaling would have to be tested in each individual link, followed by integration and end-to-end testing").

⁸⁴ *BLU Report and Order*, 32 FCC Rcd at 10821, para. 19.

⁸⁵ *Id.* ("we permit Blue Alerts to be deployed via WEA using existing alerting methodologies and consistent with our WEA rules").

⁸⁶ *Id.*

⁸⁷ See *id.* (finding that "issuance of Blue Alerts using WEA's existing standards and structures at least as a temporary measure will be effective, will reduce the necessary time for Blue Alerts to become available on WEA, and will reduce the costs to WEA stakeholders").

be implemented.”⁸⁸ Because of the similar technical and public safety-related steps involved, we proposed the same timeframe as that chosen in the *BLU Report and Order*, where we required EAS equipment manufacturers to integrate BLU EAS event codes into equipment not yet manufactured or sold, and to make necessary software upgrades available to EAS Participants within 12 months.⁸⁹ We also proposed to allow EAS Participants, as in the *BLU Report and Order*, to implement the new MEP event code “on a voluntary basis through new equipment programmed to contain the code or through a software upgrade to install the code into equipment already in place.”⁹⁰ We adopt those approaches here.

37. We allow a period of 12 months from publication of this *Report and Order* in the *Federal Register* to enable the delivery of missing and endangered person alerts over EAS and over WEA. While we “encourage stakeholders to work together voluntarily to implement” MEP Alerts in swift fashion in order to capture “the important public safety objectives involved,”⁹¹ the record reflects that implementation is not merely turn-key. Rather, some time is necessary for equipment manufacturers and CMSPs to prepare their equipment and networks to be able to process alerts sent with an MEP event code over EAS and WEA,⁹² as well as for alert originators, EAS Participants, and other stakeholders to acquire appropriate training and resources to deliver these alerts to the public if they choose to do so. This implementation schedule will ensure all stakeholders have sufficient time to address any technical, resource, and training needs they may require to ensure the successful delivery of missing and endangered person alerts.

38. The Navajo Nation supports the Commission’s 12-month implementation proposal⁹³ and urges the Commission to move swiftly to implement the MEP event code.⁹⁴ They acknowledge that implementation, especially if it is to be effective for Tribal communities and Indigenous people, will entail “comprehensive training, culturally sensitive outreach, and a holistic approach that respects tribal sovereignty.”⁹⁵ Additionally, multiple individuals commented at the Commission’s Tribal consultation and listening sessions regarding the need for socialization, outreach, and training for Tribal nations regarding implementation and adoption of the MEP code, and raised questions regarding available

⁸⁸ *MEP NPRM* at *9, para. 28.

⁸⁹ *Id.*

⁹⁰ *Id.* at para. 29.

⁹¹ *BLU Report and Order*, 32 FCC Rcd at 10822, para. 21.

⁹² Participating CMS Providers are Commercial Mobile Service Providers that have voluntarily elected to transmit Alert Messages under subpart B of the part 10 WEA rules. 47 CFR § 10.10(f).

⁹³ Navajo Nation Comments at 3. Additionally, the Nation “urges the creation of a Federal-Tribal working group tasked with monitoring the roll-out of the code and making recommendations to ensure its maxi[mum] effectiveness.” *Id.*

⁹⁴ NPM Comments at 1, 10. NPM, through its Native Broadcast Network, “operates sixty radio and three television stations” as part of its “mission to serve American Indian Tribes and Alaska Native Villages through media and communications.” *Id.* at 2. See also NTTA Comments at 2 (the code—and NTTA’s (and others) proposed code dedicated to missing and endangered Indigenous Persons—“should be activated as soon as possible”). See also Phoenix Consultation *Ex Parte* Comments at 2 (“Multiple participants articulated the importance of Tribal sovereignty in the implementation and administration of the MEP code, expressing the desire for Tribes to exercise their independent jurisdictional authority as alert code originators.”); Virtual Session Consultation, June 17, 2024, *Ex Parte* at 2 (“One commenter tied the importance of Tribal sovereignty to the earlier discussion regarding the definition of a ‘missing and endangered person.’ This participant commented that Tribes should have alerting authority and be able to be the originator of an MEP alert, and determine the criteria for when to release an alert.”).

⁹⁵ *Id.* at 1, 8. See also Virtual Session Consultation, *Ex Parte* Comments at 3 (“One participant emphasized that education and training will be critical to the MEP code’s success.” . . . “Another participant also emphasized the importance of training and acknowledged that different generations may have different affinities and aptitudes for different generations of technology.”).

funding and support for tribal nations.⁹⁶ NPM, like FEMA, pledges to work with the Commission and others in this regard.⁹⁷

39. No commenter objected to our proposed timeline. FEMA, while not commenting on the proposed implementation timeline, pledges “to work closely with the FCC to inform and empower jurisdictions” in the effective use of the MEP event code,⁹⁸ and to work with “the FCC, the broadcast industry, Alert Originators (AOs), and relevant stakeholders to determine how alerts using the MEP event code can be successfully implemented.”⁹⁹ We take this to mean that FEMA, which controls IPAWS, is committed to doing its part to ensure the MEP event code is operationalized as swiftly as possible and does not object to a 12-month timetable.

40. NCTA takes issue with our incremental time estimates in the *MEP NPRM*, arguing that the “process takes weeks to months, not a few hours as the Notice suggests.”¹⁰⁰ We proposed 12 months for implementation, which is consistent with NCTA’s contention. We also note that NCTA does not suggest that 12 months, overall, is insufficient for the labors and operations needed. Thus, we have, as NCTA urged, “take[n] notice” of the processes involved in calibrating a 12-month implementation requirement; we do not read NCTA’s comments to take issue with that overall.¹⁰¹ The Commission understands the technical issues involved in implementing the new event code and appropriately sets the implementation deadline to address those concerns.¹⁰²

41. When the Commission addressed virtually identical issues in the *BLU Report and Order*, it followed NCTA’s suggestion, then, that we look to “EAS manufacturers to determine the adequacy of the time allocated for software upgrades to equipment.”¹⁰³ There, the Commission noted comments from EAS equipment manufacturers “that 12 months is sufficient to allow for the [Blue Alerts] event code to be deployed within a scheduled in-version equipment software update, resulting in no incremental cost to

⁹⁶ See e.g. Cherokee Consultation, *Ex Parte* comments at 2 (commenting on the need for training and accountability measures, particularly among law enforcement officials, and noting that their research showed law enforcement often does not use Amber and Silver alerts due to lack of training, which slows the recovery of missing persons.). See also *id.* at 2 (raising questions about funding, specifically asking about federal funding for tribes wishing to become alerting authorities).

⁹⁷ *Id.* at 8-9.

⁹⁸ FEMA Comments at 5.

⁹⁹ *Id.* at 4.

¹⁰⁰ NCTA Comments at 3-4 (“five hours of labor for each EAS Participant [i.e., to perform low-cost software downloads] is off by orders of magnitude”).

¹⁰¹ *Id.* (“Full implementation . . . will require operators not only to download and install software in each of their EAS encoder/decoders, but also to test the new software on a variety of downstream devices, operating systems, and signaling formats and protocols in their video distribution systems end-to-end.”).

¹⁰² Wireless industry commenters take a slightly different approach to the timeline question. Like its EAS-stakeholder counterparts, CTIA does not suggest an alternative timeline. However, CTIA asserts that the Commission can “significantly reduce[] the time necessary to implement” the alerts by “preserving the existing handling codes.” CTIA Comments at 4 (citing *Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 10694 (2021) (*National Alerts Order*)). ATIS amplifies this position, adding a warning that, if the Commission decides to create a new WEA alert class for MEP, ATIS estimates that it would take “36-54 months to complete the necessary end-to-end modifications,” whereas adoption through an established WEA alert class would not have “any technical impact on WEA,” that is, in terms of “implementation time (i.e., time to field).” ATIS Comments at 2.

¹⁰³ *BLU Report and Order*, 32 FCC Rcd at 10822, para. 22 (citation omitted).

EAS Participants, rather than as a scheduled major version upgrade that would have to be separately purchased.”¹⁰⁴

42. We choose to follow our determination in the *BLU Report and Order* and require a 12-month implementation deadline for both EAS Participants and CMSPs. In the *BLU Report and Order*, we acknowledged the soundness of 12 months for EAS Participants on the theses presented there, as described above, and we believe these are mostly identical to the present MEP event code. However, in the *BLU Report and Order*, CMSPs contested a 12-month implementation deadline and specifically sought 18 months due to the technical requirements they anticipated (including concurrent implementation of then-pending wireless industry technical standards).¹⁰⁵ Those issues are not present here because the standards have now been set and implemented.¹⁰⁶ Rather, CMSPs conveyed confidence in implementation *assuming we do not order a new WEA classification for these alerts*,¹⁰⁷ which we do not choose to do. Accordingly, we adopt the same 12-month implementation schedule for CMSPs as for EAS Participants.

43. Finally, the *MEP NPRM* proposed to allow EAS Participants to upgrade their equipment to add a designated MEP event code on a voluntary basis until their equipment is replaced. This proposal is the same as, or very similar to, the approach the Commission took with Blue Alerts in 2017 and with other new EAS event codes in the past.¹⁰⁸ Commenters who addressed this issue agree.¹⁰⁹ Accordingly, we adopt our proposal, and permit EAS Participants to update their software to add the MEP event code on a voluntary basis. As the Commission observed in the *NWS Report and Order*, and re-affirmed in the *BLU Report and Order*, “the use by EAS Participants of these codes is and has always been voluntary, and it would be contrary to the voluntary nature of state and local EAS to mandate upgrades to existing EAS equipment to incorporate new optional event codes.”¹¹⁰ We again find that this approach will significantly reduce the costs to EAS Participants.

E. Further Examination of Tribal-Specific Issues

44. We sought comment in the *MEP NPRM* on additional issues that affect implementation of the MEP event code we approve today. For example, we invited comment on: (i) whether to consider a missing Tribal or Indigenous person-specific EAS code in addition to the MEP event code; (ii) how to ensure adequate protection of civil liberties, sensitive medical information, and other privacy-related issues; and (iii) public awareness, outreach, and engagement to ensure that the MEP code effectively conveys an “appropriate sense of urgency to the public and galvanize[s] the public . . . to aid in the finding of missing or endangered adults.”¹¹¹

¹⁰⁴ *Id.* (citations omitted).

¹⁰⁵ *See id.* at paras. 21-22.

¹⁰⁶ *See* CTIA Comments at 3 (confirming enhancements to the EAS and WEA systems, “including introduction of Blue Alerts in the EAS system and accommodating their transmission as WEAs”).

¹⁰⁷ *See* CTIA Comments at 3 (“Using an existing alert class to implement any MEP alert will help to avoid costly changes and potential backwards compatibility issues to handsets and Participating CMSP networks, as well as costly and time-consuming end-to-end testing and new device roll-out—all of which would delay the availability of the alert.”).

¹⁰⁸ *MEP NPRM* at *9, para. 29. *See BLU Report and Order*, 32 FCC Rcd at 10823-24, para. 23 (citing *NWS Report and Order*, 31 FCC Rcd at 7926, para. 27). This approach is consistent with the Ashanti Alert Act, which states that “[t]he minimum standards established under section 21904(a) of this title, and any other guidelines and programs established under section 21903 of this title, shall be adoptable on a voluntary basis only.” 34 USC § 21905.

¹⁰⁹ *See* NCTA Comments at 3; ACA and NTCA Comments at 2-3.

¹¹⁰ *BLU Report and Order*, 32 FCC Rcd at 10823-24, para. 23 (quoting *NWS Report and Order*, 31 FCC Rcd at 7927, para. 28 (other internal quotations omitted)).

¹¹¹ *MEP NPRM* at *8-9, paras. 24-27.

45. NPM addresses these questions in part by asking the Commission to engage with Tribes, as sovereign nations, to empower and aid their efforts to address the missing and endangered persons crisis uniquely imperiling their communities. In that regard, NPM asks the Commission to, among other things, encourage Tribes to become IPAWS Alerting Authorities and, through ONAP outreach (which necessarily would involve other alerting stakeholders, such as FEMA and DOJ), provide them the support needed to achieve that status. NPM looks to ensure that all participants in the MEP ecosystem “recognize that this work is a sacred trust.”¹¹²

46. We think there is merit to NPM’s suggested approach, given the value in ensuring the EAS efficiently and effectively addresses the plight of the missing in AI/AN communities. We are interested in how such an approach might be implemented (e.g., bringing together stakeholders from AI/AN communities, FEMA, EAS Participants, law enforcement, and other trusted alerting system stakeholders to aid a process of understanding and implementation germane to Tribal communities). Accordingly, we will continue to consider this subject through further engagement between ONAP and members of AI/AN communities, which ideally should occur in tandem with the roll-out of the MEP event code.

F. Analysis of Costs and Benefits

47. We conclude that the benefits of implementing the MEP EAS event code, and permitting MEP alerts to be deployed via WEA using existing alerting methodologies and consistent with our WEA rules, outweigh its costs. In this regard, we draw extensively on the Commission’s experience with the implementation of new EAS event codes¹¹³ and acknowledge the potential benefits of missing and endangered person alerts issued via an MEP EAS event code and WEA alerts, with respect to which nearly all commenters in this proceeding agree. We find that most of the potential costs of implementation arise from software updates made outside of the normal course of planned upgrades. We allow sufficient time and flexibility to allow manufacturers and EAS Participants and CMSPs to make upgrades and to conduct associated testing in tandem with general software upgrades installed during the regular course of business, thus minimizing costs. The rules we adopt today present many potential benefits by keeping the public informed and vigilant *via* the issuance of alerts, and by enlisting their aid to more quickly locate and recover missing and endangered persons, as well as the same kinds of cost reductions for 911 call centers and emergency responders the Commission outlined in the *BLU Report and Order*.¹¹⁴

48. *Costs.* We find, as suggested in the *MEP NPRM*, that the main cost to EAS Participants that elect to install MEP will be the cost involved in downloading the software updates into their devices and conducting associated testing.¹¹⁵ In the *MEP NPRM*, we posited that adopting an MEP Alert EAS event code would present similar technical issues to those raised in the *BLU Report and Order*, and, accordingly, tentatively concluded that the costs for adding a dedicated missing and endangered person alert EAS event code would not exceed a one-time \$12 million implementation ceiling. We carefully explained our rationale for that calculation.¹¹⁶ No industry or other commenter has challenged this tentative conclusion. Accordingly, we adopt the Commission’s tentative conclusion from the *MEP NPRM* and find that a dedicated missing and endangered person alert EAS event code would not exceed a

¹¹² *Id.* at 18. NPM suggests that this could occur under guidance set by a “vision and values” statement that establishes a core, compassionate, and enduring commitment to the human beings at the center of the missing AI/AN persons crisis. *Id.*

¹¹³ *BLU Report and Order*, 32 FCC Rcd at 10824, para. 24.

¹¹⁴ See *id.* at 10824-26, paras. 24-27 (citing *Wireless Emergency Alerts, Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-91, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11168-74, paras. 89-95 (2016) (*WEA Report and Order and FNPRM*)).

¹¹⁵ See *Blue Alert NPRM*, 32 FCC Rcd at 5288, para. 25.

¹¹⁶ See *MEP NPRM* at *11, para. 34 n.78.

one-time \$12 million implementation cost. Further, we note that EAS Participants can avoid most incremental implementation costs by downloading the new MEP event code in conjunction with a scheduled software update.

49. Although we recognize that EAS equipment manufacturers will incur some costs in making the new event code available to all EAS Participants,¹¹⁷ we believe that 12 months will provide sufficient time to dovetail the MEP upgrade with other scheduled upgrades, posing minimal expense to equipment manufacturers. We believe that the costs for implementation of WEA—given our decision not to require a new alert classification—will be similarly low. As such, we believe there will be no, or only low, incremental costs associated with the delivery of missing and endangered person alerts over WEA, and that the 12 months we grant to Participating CMS Providers is sufficient to allow providers to minimize the costs of deployment.

50. *Benefits.* We anticipate that establishing the EAS MEP event code and allowing MEP alerts through WEA will improve emergency alerting during events described in DOJ's Ashanti Alert criteria,¹¹⁸ as well as other missing and endangered person scenarios, thereby helping law enforcement locate and recover missing and endangered persons and return them to their regular lives. Existing EAS event codes, such as CAE (AMBER) and LEW (law enforcement warning), are either unavailable for missing and endangered adults (AMBER) or do not effectively identify missing and endangered person alerts to the public (LEW).¹¹⁹ While precise numerical estimation is not possible, we expect that the MEP event code will improve public safety outcomes for missing and endangered persons in a similar fashion to CAE and AMBER Alerts.¹²⁰ We note the success of AMBER Alerts, where 180 out of the 181 AMBER Alerts issued in 2022 resulted in a recovery, with respect to which 16 were as a direct result of an AMBER Alert being issued.¹²¹ In contrast, Ashanti Alerts have not been as effective as AMBER

¹¹⁷ See *BLU Report and Order*, 32 FCC Rcd at 10824-25, para. 25.

¹¹⁸ See Bureau of Justice Assistance Fact Sheet, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/National-Ashanti-Alert-Network-Fact-Sheet.pdf> (listing the three Ashanti Alert activation criteria: individuals over the age of 17; missing adults with special needs or circumstances; missing adults who are endangered or have been involuntarily abducted or kidnapped).

¹¹⁹ See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, 17 FCC Rcd 4055, 4065, paras. 18-20. See also Alfred Kenyon Comments at 3-4 (“[T]he current work-around using LAE, LEW, or CEM results in self-contradiction within the resulting EAS message which serves to decrease public understanding and response. By providing a clear distinction between Missing and Endangered Person alerts and LAE, LEW, or CEM alerts, EAS Participants will be allowed to adjust the filters in their EAS devices to provide the level of action and response to incoming EAS messages that they deem appropriate for each situation based [on] the needs of their community.”).

¹²⁰ See *MEP NPRM* at *10, para. 32. See also FEMA Comments at 4 (“a unified MEP event code will address many missing persons who currently fall outside the requirements for use of the federal EAS Child Abduction Emergency (CAE) event code”); NPM Comments at 9 (“The stark reality is that adults can and do go missing under dangerous circumstances every day. Whether due to cognitive impairments such as dementia or Alzheimer’s, mental health crises, domestic violence, or other factors, these individuals are at grave risk of harm or exploitation. While the AMBER Alert has been instrumental in the safe recovery of numerous children, adult cases do not fit the strict criteria for AMBER Alerts The proposed creation of a unique EAS event code for missing and endangered adults, distinct from the existing frameworks for AMBER and Silver Alerts, is a necessary and overdue step to protect some of our most vulnerable citizens. . . . We urge the Commission to move swiftly to implement the MEP event code and give our missing and endangered adults the best possible chance to be found and brought home safely.”); Virtual Consultation, June 17, 2024 *Ex Parte* Comments at 2 (“One participant observed that her Tribe’s adoption of Amber Alerts was highly successful, explaining that the eight times that their tribe issued an Amber [A]lert, the missing child was successfully recovered. The participant also observed that these alerts had been disseminated throughout the three states surrounding the Tribal reservation, and suggested that this wide dissemination was a part of the success.”).

¹²¹ DOJ, *Amber Alert Report 2022*, p. 7 (2023), <https://amberalert.ojp.gov/publications/2022-amber-alert-report.pdf>.

Alerts.¹²² We anticipate that using a dedicated MEP Event code in the EAS and the corresponding WEA handling codes would greatly improve the effectiveness of the alerts for missing and endangered persons not currently covered by AMBER Alerts. Given that fewer than one third of active missing persons records involves children under the age of 18,¹²³ we anticipate the number of the MEP Alerts per year would be at least double the number of AMBER Alerts.¹²⁴ We believe it is reasonable to expect that many more missing and endangered persons will be located and recovered due to the issuance of an EAS missing and endangered person alert that uses the MEP event code.¹²⁵ Extrapolating the recovery of missing children directly attributable to AMBER Alerts,¹²⁶ we estimate that more than 15 additional missing adults per year would be recovered as a result of this *Order*.¹²⁷ The recovery could prevent deaths and bodily harm that these missing persons may otherwise have to endure. Therefore, the benefits to public safety as a result of this *Order* could be substantial. If even one life is saved due to these recoveries, the public safety benefits would outweigh the costs.¹²⁸ We conclude that the minor burdens

¹²² For instance, Virginia issued 16 Ashanti Alerts between July 2018 and January 2023, resulting in eight missing persons safely located. See Letter from Robert P. Mosier, Secretary of Public Safety and Homeland Security, Commonwealth of Virginia Office of the Governor, to Senator Mark R. Warner at 5, Exhibit 5 (Feb. 2, 2023), https://www.warner.senate.gov/public/_cache/files/9/f/9fca8e28-a0ef-4a14-8b4f-f8ce38174444/0CD0B55C44112C12D168AF5C1C07A844.attachment-for-ashanti-interviews.pdf. This 50% eight recovered cases in 16 Ashanti Alerts recovery rate is about half as effective as the AMBER Alert's recovery rate of 99.4% (180 recovered cases in 181 AMBER Alerts).

¹²³ See *supra* note 2 (stating that, as of December 31, 2023, there were 96,955 active missing person records, of which roughly 68,000 were 18 or older).

¹²⁴ This estimate is likely an underestimation because NCIC users are not mandated under federal law to submit missing person records of adults over the age of 21. Therefore, although records of missing adults are captured, the NCIC does not include the complete number of adults who go missing and are not reported to the database. Congression Research Service, Missing Adults: Background, Federal Programs, and Issues for Congress at 4 (Aug. 23, 2019), <https://crsreports.congress.gov/product/pdf/RL/RL34616/34>.

¹²⁵ See, e.g., AMBER Alert – Statistics, <https://amberalert.ojp.gov/statistics> (“As of December 31, 2023, 1,200 children were successfully recovered through the AMBER Alert system and 180 children were rescued because of wireless emergency alerts.”); see also National Center for Missing & Exploited Children, 2022 AMBER Alert Report at 5, <https://amberalert.ojp.gov/publications/2022-amber-alert-report.pdf> (“What began as a local effort in the Dallas-Fort Worth area has grown into a seamless nationwide initiative, with many other countries following suit. AMBER Alerts in the United States have continued to make use of every available technology. From the initial program launch in October of 1996 through December 2022, at least 1,133 children have been confirmed as safely recovered due to an AMBER Alert being issued.”); Virtual Session Consultation, June 17, 2024 *Ex Parte* at 2.

¹²⁶ We calculate that 99.4% (180 of 181) of AMBER Alert cases result in a recovery, and conservatively estimate an approximately 8.8% (16 of 181) case recovery rate as a *direct result* of AMBER Alerts.

¹²⁷ We assume current Ashanti Alerts are half as effective as AMBER Alerts; we expect the case recovery as a direct result of existing Ashanti Alert would be 4.4% ($= \frac{1}{2} \times 8.8\%$). By assigning a designated MEP code for missing and endangered persons, we expect the Order will increase the recovery rate by at least 4.4% ($= 8.8\%$ AMBER Alerts direct case recovery rate – 4.4% Ashanti Alert direct case recovery rate) to match the AMBER Alert direct case recovery rate of 8.8%. See *supra* notes 127 & 131. Assuming there would be twice as many MEP Alerts issued under the Order as AMBER Alerts (e.g., 181 AMBER Alerts $\times 2 = 362$ MEP Alerts), we estimate that over 15 missing adults per year ($362 \text{ MEP Alerts} \times 4.4\% \text{ incremental direct recovery rate} = 15.9 \text{ missing person cases}$) would be recovered as a result of this Order. This estimate is likely underestimated because missing adults are under-reported in the NCIC database. See *supra* note 128.

¹²⁸ While we do not attempt to place a value on human life, we note that the amount consumers are willing to pay to reduce mortality risk is approximately \$12.5 million, using a methodology developed by the U.S. Department of Transportation (DOT) that we have relied on in past orders. See, e.g., *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4, at 52, para. 118 (Jan. 26, 2024) (*LBR Order*) (citing the value of \$12.5 million in 2022 based on U.S. Department of Transportation, *Departmental Guidance on Valuation of a Statistical Life in Economic Analysis* (Mar. 4, 2022) (later updated to \$13.2 million in 2023),

(continued....)

associated with adopting the MEP code will be more than offset by its benefits.¹²⁹ We also conclude that, given the potential for lifesaving and reduction in harm, if even the number of missing persons equals those found due to AMBER Alerts, and definitely if it exceeds it, this item will result in excess of \$100 million in benefits.

IV. PROCEDURAL MATTERS

A. Accessible Formats

51. 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).

B. Regulatory Flexibility Analysis

52. The Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁰ 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.”¹³¹ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Report and Order on small entities. The FRFA is set forth in Appendix B.

C. Paperwork Reduction Analysis

53. This document does not contain proposed information collection(s) 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).

D. Congressional Review Act

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

E. Availability of Documents

55. This Report and Order will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

<https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>. Hence, even with one life saved, the \$12.5 million in benefit of mortality risk reduction clearly outweighs the estimated cost ceiling of \$12 million.

¹²⁹ See NTTA Comments at 4 (“When compared to lives saved, [\$12 million for implementing MEP nationwide] is a small price to pay[.] . . . Assuming an equal or greater success rate [compared to AMBER Alerts], the only conclusion that can be drawn is implementing a dedicated MEP alert code, and a dedicated Missing and Endangered Indigenous Persons code, meets and greatly exceeds any cost/benefit analysis that can be conceived.”).

¹³⁰ 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).

¹³¹ 5 U.S.C. § 605(b).

F. Additional Information

56. For additional information on this proceeding, contact David Kirschner, David.Kirschner@fcc.gov or (202) 418-0695, Public Safety and Homeland Security Bureau.

V. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(n), 303(r), 303(v), 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(n), 303(r), 303(v), 544(g), 606, this *Report and Order* IS ADOPTED.

58. IT IS FURTHER ORDERED that the Commission's rules ARE HEREBY AMENDED as set forth in Appendix A.

59. IT IS FURTHER ORDERED that the rules and requirements adopted herein, including at Appendix A, to enable the delivery of missing and endangered person alerts over EAS WILL BECOME EFFECTIVE 12 months from the date of publication in the Federal Register.

60. IT IS FURTHER ORDERED that the rules and requirements adopted herein, including at Appendix A, to enable the delivery of missing and endangered person alerts over WEA WILL BECOME EFFECTIVE 12 months from the date of publication in the Federal Register.

61. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

62. IT IS FURTHER ORDERED that the Commission's Office of Secretary SHALL SEND a copy of this *Report and Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed above, the Federal Communications Commission amends 47 C.F.R. part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 is revised to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (n), 303(r), 544(g), 606, 1201 and 1206.

2. Effective 12 months after publication in the Federal Register, amend § 11.31 by:

- a. Designating the table immediately following paragraph (d)(1) as table 1 to paragraph (d)(1); and
- b. Designating the table immediately following paragraph (e) as table 2 to paragraph (e); and
- c. Revising table 2 to paragraph (e); and
- d. Designating the table immediately following paragraph (f) as table 3 to paragraph (f).

The revision to table 2 to paragraph (e) reads as follows:

§ 11.31 EAS protocol.

* * * * *

(e)

Nature of activation	Event codes
National Codes (Required):	
Emergency Action Notification (National only)	EAN.
National Information Center	NIC
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.
Avalanche Warning	AVW.
Avalanche Watch	AVA.
Blizzard Warning	BZW.
Blue Alert	BLU.
Child Abduction Emergency	CAE.

Civil Danger Warning	CDW.
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW.
Coastal Flood Watch	CFA.
Dust Storm Warning	DSW.
Earthquake Warning	EQW.
Evacuation Immediate	EVI.
Extreme Wind Warning	EWV.
Fire Warning	FRW.
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.
Hazardous Materials Warning	HMW.
High Wind Warning	HWW.
High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW.
Local Area Emergency	LAE.
Missing and Endangered Persons	MEP.
Network Message Notification	NMN.

911 Telephone Outage Emergency	TOE.
Nuclear Power Plant Warning	NUW.
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW.
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW
Special Marine Warning	SMW.
Special Weather Statement	SPS.
Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
Tornado Warning	TOR.
Tornado Watch	TOA.
Tropical Storm Warning	TRW.
Tropical Storm Watch	TRA.
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW.
Winter Storm Warning	WSW.
Winter Storm Watch	WSA.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System Notice of Proposed Rulemaking (MEP NPRM)* released in March 2024.² The Commission sought written public comment on the proposals in the *MEP NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Order

2. The *Order* advances the important public policy of encouraging the formation, enhancement, and integration of Ashanti Alert plans throughout the United States, and for other purposes,⁴ by “establish[ing] a voluntary nationwide communication network to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America’s Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts.”⁵ As required by the Ashanti Alert Act of 2018 (Ashanti Alert Act), the Department of Justice (DOJ) has designated the Bureau of Justice Assistance (BJA) as the Ashanti Alert Coordinator⁶ which, in turn, has developed guidance for “states, Indian Tribes, local governments, law enforcement agencies, and other stakeholders seeking to establish or enhance an existing Ashanti Alert Plan” in a manner that will promote compatible and integrated missing and endangered person plans throughout the United States.⁷ The *Order* creates and adds a dedicated missing and endangered persons (MEP) event code to the Emergency Alert System (EAS) Protocol for Ashanti Alerts, and permits MEP alerts to be deployed via Wireless Emergency Alerts (WEA) using existing alerting methodologies and consistent with our WEA rules. It also establishes a period of 12 months from publication of this *Report and Order* in the *Federal Register* to enable the delivery of Ashanti Alerts over EAS, and over WEA. Ashanti Alert carriage, and use of the MEP event code will be voluntary.⁸ EAS Participants who decide to carry missing and endangered person alerts, including Ashanti Alerts, should be able to accommodate the new code with a software upgrade of equipment already in place but not yet capable of handling these codes. Any new equipment allowed under existing rules is either similarly upgradeable or will already be programmed to handle the code.

3. The *Order* promotes the development of compatible and integrated Ashanti Alert plans throughout the United States, consistent with the Ashanti Alert Act,⁹ and supports the need for a dedicated EAS event code for missing and endangered person alerts. The *Order* also describes the integration of missing and endangered person alerts into WEA.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Notice of Proposed Rulemaking, 2024 WL 1191983, Appendix B (March 15, 2024) (*MEP NPRM*).

³ See 5 U.S.C. § 604.

⁴ 34 U.S.C. § 21901, *et. seq.*

⁵ *Ashanti Alert Notification System Overview*. See also *Ashanti Alert Fact Sheet*.

⁶ 34 U.S.C. § 21903.

⁷ 34 U.S.C. §§ 21902 and 21903.

⁸ See, e.g., 47 CFR § 11.55(a); 47 CFR § 11.52(d)(5). See also *First Report and Order*, 20 FCC Rcd at 18628, para. 8.

⁹ 34 U.S.C. § 50501 *et. seq.*

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically address the proposed rules and policies presented in the IRFA.

C. Response to Comments by 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.¹⁰

6. The Chief Counsel did not file any comments in response to the proposed rule changes in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁵ First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁶ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁷

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁸ The

¹⁰ 5 U.S.C. § 604 (a)(3).

¹¹ *Id.* § 604(a)(4).

¹² *Id.* § 601(6).

¹³ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁴ 15 U.S.C. § 632

¹⁵ 5 U.S.C. § 601(3)-(6).

¹⁶ 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).

¹⁷ *Id.*

¹⁸ 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.¹⁹ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.²⁰

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²¹ 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.²² Nationwide, for tax year 2022, there were approximately 530,109 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.²³

11. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.²⁴ 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.²⁵ The SBA size standard for this industry classifies a business as small if it has

¹⁹ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

²⁰ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

²¹ 5 U.S.C. § 601(4).

²² 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.

²³ 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 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

²⁴ 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>.

²⁵ *Id.*

1,500 or fewer employees.²⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.²⁷ Of that number, 2,837 firms employed fewer than 250 employees.²⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.²⁹ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.³¹ The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).³² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁴ Of this number, 2,837 firms employed fewer than 250 employees.³⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

13. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.³⁶ The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for

²⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁰ *Id.*

³¹ See 47 CFR § 24.200.

³² 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>.

³³ See 13 CFR § 121.201, NAICS Code 517312.

³⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁵ *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.

³⁶ Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)," Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

the preceding three years.³⁷ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.³⁸

14. In frequency bands where licenses were subject to auction, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

15. *Narrowband Personal Communications Services.* Narrowband Personal Communications Services (*Narrowband PCS*) are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.³⁹ PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.⁴⁰ Wireless Telecommunications Carriers (*except* Satellite)⁴¹ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁴³ Of this number, 2,837 firms employed fewer than 250 employees.⁴⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

16. According to Commission data as of December 2021, there were approximately 4,211 active Narrowband PCS licenses.⁴⁵ The Commission's small business size standards with respect to Narrowband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁴⁶ A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years

³⁷ See 47 CFR § 24.720(b).

³⁸ See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions>.

³⁹ See 47 CFR § 24.5.

⁴⁰ *Id.*

⁴¹ 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>.

⁴² See 13 CFR § 121.201, NAICS Code 517312.

⁴³ 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>. At this time, the 2022 Economic Census data is not available.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁴⁶ See 47 CFR § 24.321(a)(1)-(2).

of not more than \$15 million.⁴⁷ Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.⁴⁸ One of the winning bidders claiming a small business status classification in these Narrowband PCS license auctions had an active license as of December 2021.⁴⁹

17. In frequency bands where licenses were subject to auction, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

18. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.⁵⁰ Wireless Telecommunications Carriers (*except* Satellite)⁵¹ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁵³ Of this number, 2,837 firms employed fewer than 250 employees.⁵⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

19. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the

⁴⁷ *Id.*

⁴⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf>; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf>.

⁴⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁵⁰ See 47 CFR §§ 27.1 – 27.1607.

⁵¹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁵² See 13 CFR § 121.201, NAICS Code 517312.

⁵³ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

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.

requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.⁵⁵

20. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *700 MHz Guard Band Licensees.* The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)⁵⁶ is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁵⁸ Of this number, 2,837 firms employed fewer than 250 employees.⁵⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.⁶⁰ The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁶¹ Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two

⁵⁵ See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

⁵⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁵⁷ See 13 CFR § 121.201, NAICS Code 517312.

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

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 Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁶¹ See 47 CFR § 27.502(a).

licenses.⁶² None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.⁶³

23. In frequency bands where licenses were subject to auction, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.⁶⁴ Wireless Telecommunications Carriers (*except* Satellite)⁶⁵ is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁶⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁶⁷ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁸ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

25. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.⁶⁹ The Commission's small business size standards with respect to

⁶² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf>, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf>.

⁶³ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁶⁴ See Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/44/factsheet>, <https://www.fcc.gov/auction/49/factsheet>, <https://www.fcc.gov/auction/60/factsheet>.

⁶⁵ 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>.

⁶⁶ See 13 CFR § 121.201, NAICS Code 517312.

⁶⁷ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

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 Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note (continued....)

Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.⁷⁰ In auctions for Lower 700MHz Band licenses, 72 winning bidders claiming a small business classification won 329 licenses,⁷¹ 26 winning bidders claiming a small business classification won 214 licenses,⁷² and three winning bidders claiming a small business classification won all five auctioned licenses.⁷³

26. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

27. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.⁷⁴ Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.⁷⁵ Wireless Telecommunications Carriers (*except* Satellite)⁷⁶ is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this

that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁷⁰ See 47 CFR § 27.702(a)(1)-(3).

⁷¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf>.

⁷² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf>.

⁷³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf>.

⁷⁴ See 47 CFR § 27.4.

⁷⁵ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/73/factsheet>. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

⁷⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷⁷ See 13 CFR § 121.201, NAICS Code 517312.

industry for the entire year.⁷⁸ Of that number, 2,837 firms employed fewer than 250 employees.⁷⁹ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

28. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.⁸⁰ The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁸¹ Pursuant to these definitions, three winning bidders claiming very small business status won five of the 12 available licenses.⁸²

29. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

30. *Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000–2020 MHz and 2180–2200 MHz (AWS-4)).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services.⁸³ Wireless Telecommunications Carriers (*except* Satellite)⁸⁴ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁵ U.S. Census Bureau data for

⁷⁸ 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=EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷⁹ *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.

⁸⁰ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁸¹ See 47 CFR § 27.502(a).

⁸² See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

⁸³ See 47 CFR § 27.1(b).

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 517312.

2017 show that there were 2,893 firms that operated in this industry for the entire year.⁸⁶ Of this number, 2,837 firms employed fewer than 250 employees.⁸⁷ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

31. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.⁸⁸ The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.⁸⁹ Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.⁹⁰ In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.⁹¹

32. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

33. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"⁹² transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁹³ Wireless cable operators that use spectrum in the BRS

⁸⁶ 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>. At this time, the 2022 Economic Census data is not available.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁸ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

⁸⁹ See 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

⁹⁰ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, <https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf>.

⁹¹ See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

⁹² The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

⁹³ See 47 CFR § 27.4; see also *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and*

(continued....)

often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.⁹⁴

34. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).⁹⁵ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁷ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁸ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

35. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.⁹⁹ The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁰⁰ Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.¹⁰¹

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁹⁴ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

⁹⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁶ See 13 CFR § 121.201, NAICS Code 517312.

⁹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=EC1700SIZEEMPFIIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

⁹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

¹⁰⁰ See 47 CFR § 27.1218(a).

¹⁰¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.¹⁰²

36. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five years.¹⁰³ In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

37. *The Educational Broadcasting Services.* Cable-based educational broadcasting services fall under the broad category of the Wired Telecommunications Carriers industry.¹⁰⁴ The Wired Telecommunications Carriers industry 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.¹⁰⁵ Transmission facilities may be based on a single technology or a combination of technologies.¹⁰⁶ 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.¹⁰⁷

38. The SBA small business size standard for this industry classifies businesses having 1,500 or fewer employees as small.¹⁰⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.¹⁰⁹ Of this total, 2,964 firms operated with fewer than 250

¹⁰² Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

¹⁰³ See 47 CFR § 27.1219(a).

¹⁰⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>. Examples of this category 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 owner operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See 13 CFR § 121.201, NAICS Code 517311.

¹⁰⁹ 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>. At this time, the 2022 Economic Census data is not available.

employees.¹¹⁰ Thus, under this size standard, the majority of firms in this industry can be considered small. Additionally, according to Commission data as of December 2021, there were 4,477 active EBS licenses.¹¹¹ The Commission estimates that the majority of these licenses are held by non-profit educational institutions and school districts and are likely small entities.

39. *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.¹¹² 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.¹¹³ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹¹⁵ Of this number, 624 firms had fewer than 250 employees.¹¹⁶ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

40. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.¹¹⁷ Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.¹¹⁸ These establishments may design, develop, and publish, or publish only.¹¹⁹ The SBA small business size standard for this industry classifies businesses having annual receipts of \$41.5 million or less as small.¹²⁰ U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.¹²¹

¹¹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹¹ Based on a FCC Universal Licensing System search on December 17, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more license.

¹¹² 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>.

¹¹³ *Id.*

¹¹⁴ See 13 CFR § 121.201, NAICS Code 334220.

¹¹⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁷ See U.S. Census Bureau, 2017 NAICS Definition, “511210 Software Publishers,” <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See 13 CFR § 121.201, NAICS Code 511210.

¹²¹ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFFIRM, NAICS Code 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFFIRM&hidePreview=false>.

Of this number 7,226 firms had revenue of less than \$25 million.¹²² Based on this data, we conclude that a majority of firms in this industry are small.

41. *Noncommercial Educational (NCE) and Public Broadcast Stations.* Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

42. The SBA small business size standards and U.S. Census Bureau data classify radio stations¹²³ and television broadcasting¹²⁴ separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television broadcasting classify firms having \$47 million or less in annual receipts as small.¹²⁵ For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than \$25 million per year.¹²⁶ For Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than \$25,000,000.¹²⁷ While the U.S. Census Bureau data does not indicate the number of non-commercial stations, we estimate that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities. According to Commission data as of March 31, 2024, there were 4,703 licensed noncommercial educational radio and television stations¹²⁸ In addition, the Commission estimates as March 31, 2024, there were 383 licensed

¹²² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹²³ See U.S. Census Bureau, 2017 NAICS Definition, "515112 Radio Stations," <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

¹²⁴ See U.S. Census Bureau, 2017 NAICS Definition, "515120 Television Broadcasting," <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹²⁵ See 13 CFR § 121.201, NAICS Code 515112 (Radio Stations) (as of 10/1/22 NAICS Code 516110); NAICS Code 515120 (Television Broadcasting) (as of 10/1/22 NAICS Code 516120).

¹²⁶ 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>. At this time, the 2022 Economic Census data is not available. 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 for the entire year. We also 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.

¹²⁷ 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>. At this time, the 2022 Economic Census data is not available. 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.

¹²⁸ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 LPTV stations and 3,118 TV translator stations.¹²⁹ The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards. However, given the nature of these services, we will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

43. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”¹³⁰ Programming may originate in their own studio, from an affiliated network, or from external sources.¹³¹ The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small.¹³² U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.¹³³ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.¹³⁴ Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

44. The Commission estimates that as of June 30, 2024, there were 4,413 licensed commercial AM radio stations and 6,620 licensed commercial FM radio stations, for a combined total of 11,033 commercial radio stations.¹³⁵ Of this total, 11,032 stations (or 99.99 %) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on July 3, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2024, there were 4,356 licensed noncommercial (NCE) FM radio stations, 1,965 low power FM (LPFM) stations, and 8,906 FM translators and boosters.¹³⁶ 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.

¹²⁹ *Id.*

¹³⁰ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

¹³¹ *Id.*

¹³² See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹³³ 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>. At this time, the 2022 Economic Census data is not available. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

¹³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

¹³⁵ *Broadcast Station Totals as of June 30, 2024*, Public Notice, DA 24-644 (rel. July 3, 2024) (*July 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-644A1.pdf>.

¹³⁶ *Id.*

45. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹³⁷ 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.

46. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the industry for Radio Stations.¹³⁸ The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public.¹³⁹ Programming may originate in their own studio, from an affiliated network, or from external sources.¹⁴⁰ The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small.¹⁴¹ U.S. Census Bureau data for 2017 show that 2,963 firms operated during that year.¹⁴² Of that number, 1,879 firms operated with revenue of less than \$25 million per year.¹⁴³ Therefore, based on the SBA’s size standard we conclude that the majority of FM Translator stations and Low Power FM Stations are small. Additionally, according to Commission data, as of March 31, 2024, there were 8,913 FM Translator Stations and 1,960 Low Power FM licensed broadcast stations.¹⁴⁴ The Commission however does not compile and otherwise does not have access to information on the revenue of these stations that would permit it to determine how many of the stations would qualify as small entities. For purposes of this regulatory flexibility analysis, we presume the majority of these stations are small entities.

¹³⁷ “[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).

¹³⁸ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹⁴² 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>. At this time, the 2022 Economic Census data is not available. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

¹⁴³ *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 annual receipts 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.

¹⁴⁴ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

47. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁴⁵ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁴⁶ 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 \$47 million or less in annual receipts as small.¹⁴⁷ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹⁴⁸ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁴⁹ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

48. As of June 30, 2024, there were 1,384 licensed commercial television stations.¹⁵⁰ Of this total, 1,307 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 3, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,821 LPTV stations and 3,100 TV translator stations.¹⁵¹ 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.

49. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁵² The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.¹⁵³ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁵⁴ The SBA small business size standard for this industry classifies firms with

¹⁴⁵ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁴⁶ *Id.*

¹⁴⁷ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

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 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

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 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 Broadcast Station Totals as of June 30, 2024, Public Notice, DA 24-644 (rel. July 3, 2024) (July 2024 Broadcast Station Totals PN), <https://docs.fcc.gov/public/attachments/DA-24-644A1.pdf>.

¹⁵¹ *Id.*

¹⁵² See U.S. Census Bureau, 2017 NAICS Definition, “515210 Cable and Other Subscription Programming,” <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

annual receipts less than \$41.5 million as small.¹⁵⁵ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹⁵⁶ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.¹⁵⁷ Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

50. *Cable System Operators (Rate Regulation Standard)*. 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.¹⁵⁸ Based on industry data, there are about 420 cable companies in the U.S.¹⁵⁹ Of these, only seven have more than 400,000 subscribers.¹⁶⁰ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁶¹ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹⁶² Of these, about 639 have more than 15,000 subscribers.¹⁶³ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

51. *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."¹⁶⁴ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹⁶⁵ Based on industry data, only six cable system operators have

¹⁵⁵ See 13 CFR § 121.201, NAICS Code 515210.

¹⁵⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

¹⁵⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁵⁸ 47 CFR § 76.901(d).

¹⁵⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹⁶⁰ 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).

¹⁶¹ 47 CFR § 76.901(c).

¹⁶² S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹⁶³ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

¹⁶⁴ 47 U.S.C. § 543(m)(2).

¹⁶⁵ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

more than 498,000 subscribers.¹⁶⁶ 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.¹⁶⁷ 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.

52. *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.”¹⁶⁸ 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.¹⁶⁹ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹⁷⁰ Of this number, 242 firms had revenue of less than \$25 million.¹⁷¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.¹⁷² Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹⁷³ Consequently, using the SBA’s small business size standard, approximately two-thirds of these providers can be considered small entities.

53. *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.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶

¹⁶⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹⁶⁷ 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).

¹⁶⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹⁶⁹ See 13 CFR § 121.201, NAICS Code 517410.

¹⁷⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁷¹ *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.

¹⁷² 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>.

¹⁷³ *Id.*

¹⁷⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁷⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁷⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹⁷⁹ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

54. *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.¹⁸⁰ Transmission facilities may be based on a single technology or combination of technologies.¹⁸¹ 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.¹⁸² By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹⁸³

55. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁸⁴ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.¹⁸⁵ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁸⁶ 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

¹⁷⁷ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁷⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁷⁹ *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.

¹⁸⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁸¹ *Id.*

¹⁸² 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).

¹⁸³ *Id.*

¹⁸⁴ See 13 CFR § 121.201, NAICS Code 517311.

¹⁸⁵ 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>.

¹⁸⁶ *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.

operation.¹⁸⁷ 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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

56. The *Order* will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities, including EAS Participants that choose to use the new MEP code, and small EAS equipment manufacturers. As proposed in the *MEP NPRM*, use of the MEP event code for EAS is voluntary. We allow a period of 12 months from publication of the *Report and Order* in the *Federal Register* to enable the delivery of Ashanti Alerts over EAS, and 12 months from publication of the *Report and Order* in the *Federal Register* to enable the delivery of Ashanti Alerts over WEA. This will allow time for the equipment manufacturers and Commercial Mobile Service Providers (CMSPs) to prepare their equipment and networks to be able to process Ashanti Alerts sent over EAS and WEA. This will also allow EAS Participants and other stakeholders to acquire the training and resources to deliver Ashanti Alerts to the public.

57. We find that most of the potential costs of implementation arise from software updates made outside of the normal course of planned upgrades and estimate that a dedicated Ashanti Alert EAS event code would not exceed a one-time \$12 million implementation cost. The main cost is to EAS Participants, in that those who elect to install the MEP alert code will bear the cost involved in downloading the software updates into their devices, and any associated clerical work.¹⁸⁸ We minimize additional costs by allowing sufficient time and flexibility so that manufacturers and EAS Participants may make upgrades in tandem with general software upgrades installed during the regular course of business. This approach will significantly reduce the costs to small entities as well as to other EAS Participants, which fosters greater support for the MEP alerts and ensures that a more alerts about missing and endangered person alerts are transmitted by EAS Participants over time. As noted above, the *Order* permits transmission of MEP Alerts over WEA using an existing WEA message classification.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. 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.”¹⁸⁹

59. As mentioned above, the *Order* adopts “MEP” as a new EAS event code for Ashanti Alerts, and requires implementation by small and other participating EAS Participants and CMRS Providers on a voluntary basis through equipment already in place, which will require a software upgrade. Among the alternatives presented in the *MEP NPRM* was whether there are existing EAS event codes that could effectively transmit Ashanti Alerts. The Commission determined that existing EAS event codes are either unavailable for missing and endangered adults or do not effectively identify Ashanti Alerts to the public. We also considered a Tribal-specific Missing Indigenous Person (MIP) event code, however we did not adopt this alternative because there is greater support for the MEP EAS code. In considering ways to minimize costs to EAS Participants associated with implementing the codes, the Commission

¹⁸⁷ 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).

¹⁸⁸ *Order* at para. 49

¹⁸⁹ 5 U.S.C. § 604(a)(6).

anticipates compliance costs will be limited to the cost of labor for downloading software updates, which may be completed during the regular course of business.

G. Report to Congress

60. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹⁹⁰ In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.¹⁹¹

¹⁹⁰ See *Id.* § 801(a)(1)(A).

¹⁹¹ See *Id.* § 604(b).

APPENDIX C

MEP NPRM Commenters

Commenter	Abbreviation
ACA Connects—America’s Communication Association	ACA Connects
Alliance for Telecommunications Industry Solutions	ATIS
Association of Public-Safety Communications Officials, International	APCO
Andrew Bagdonas	
Chris Bedeau	
Brian Brashier	
CTIA—The Wireless Association	CTIA
Richard Alun Davis	
Kyler Edsitty	
Federal Emergency Management Association	FEMA
Inter-Tribal Council of the Five Civilized Tribes	
Alfred S. Kenyon, III	
Lighthouse Police Department	
National Congress of American Indians	NCAI
National Tribal Telecommunications Association	NTTA
Native Public Media	NPM
Navajo Nation	
NCTA—The Internet & Television Association	NCTA
Nevada Coalition to END Domestic and Sexual Violence	NCEDSV
NTCA—The Rural Broadband Association	NTCA
Planned Parenthood Votes Nevada	
Nathan Pryor	
Seattle Indian Health Board	SIHB
Thomas Neve	
Southern Ute Indian Tribe	
Tribal Consultation – Cherokee, North Carolina	
Tribal Consultation – Phoenix, Arizona	
Tribal Consultation – Rancho Cordova, California	
Tribal Consultation – Virtual	
Tribal Consultation – Wyandotte, Oklahoma	
Urban Indian Health Institute	UIHI
Brian Wadsworth	

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Wireless Emergency Alerts*, PS Docket No. 15-91; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94; Report and Order (August 7, 2024)

Last week I was in Prior Lake, Minnesota, where I spoke to a group of women from Tribal Nations. It was a privilege to talk to them about the Federal Communications Commission. But to be honest, it was not immediately clear to those assembled why I was even present. This was not a group accustomed to having the leadership of a regulatory agency with responsibility for communications technology join them for their gathering. But I was there with a message of hope. Because I believe we can do something to help address the crisis of missing, murdered and Indigenous women and girls, and more broadly, the crisis of missing and endangered persons in Native communities.

So I began my remarks by talking about what is universally true—that is, when a loved one goes missing the distress is urgent and intense. It is an impossible mix of hope and despair. We hope for a swift return, so that they come home unharmed and with a chance to restore some measure of normal. But we also despair because resources may not follow, and fear emerges that maybe your loved one does not matter enough or that you will not be lucky enough to make a breakthrough in the critical day or two following their disappearance. It could break you. I know, just thinking about it as a mother, it is too much. I am fortunate that I can only imagine.

Then I moved on to the facts. The Bureau of Indian Affairs estimates there are more than four thousand cases of missing and murdered American Indian and Alaska Natives that are unsolved. According to the Federal Bureau of Investigation, the numbers missing are more than two and half times their share of the United States population. While there are new methods to collect data on missing and endangered Tribal and Native people, the true magnitude of this problem is hard to capture through data alone.

Here is another fact. One of the most effective initiatives we have had to assist with the recovery of endangered kids are AMBER Alerts. AMBER Alerts have been around for nearly three decades. They tell us on television, radio, and wireless phones when a child goes missing. So many young people have been safely found as a result of these alerts. In fact, as you heard earlier today from Lavina Willie-Nez, her Tribe issued eight AMBER Alerts and in all eight instances the missing child was successfully recovered. AMBER Alerts demonstrate that there is a way to raise awareness when someone goes missing and increase the odds that we safely find them.

But for an AMBER Alert to go out, a missing person has to be 17 years old or younger. And roughly one in three missing persons reports are for adults. We are talking 188,000 people last year who went missing. But we do not have a tool on par with AMBER Alerts to raise awareness and assist with recovery efforts of those 18 and older. I think it would make difference if we did. Because while only one third of those who go missing are adults, they account for 70 percent of people who are never found.

Today we create a new code in our emergency alert systems for television, radio, and wireless phones to help find those missing and endangered persons that fall outside of the criteria for AMBER Alerts. This new capability—the “Missing and Endangered Persons” or MEP alert code—will sound the alarm when people are missing and endangered, help raise awareness, and support recovery.

In developing this proposal, we received so many comments. The most powerful testimonies came from Tribal communities. Their input—including from government-to-government consultations held between Tribal communities and our Office of Native Affairs and Policy—provided a voice for the murdered and missing.

I want to thank Lavina Willie-Nez, who is the AMBER Alert Coordinator from the Navajo Department of Police for her testimony supporting our efforts today. I also want to acknowledge the National Congress of American Indians for their work to pass a resolution to support the Commission establishing this new code. In addition, I want to acknowledge the efforts of members of Congress who have brought attention to this issue, including Senators Luján, Schatz, Daines, Tester, Murkowski, and Cortez Masto. Our work also owes a debt of gratitude to Native Public Media for bringing this issue to our attention. So a big thank you to Loris Taylor of Native Public Media who was instrumental in this effort, pressing us to understand the plight of missing and murdered Indigenous people and urging us at the FCC to recognize we have the power to do something about it. We do. And as a result of the action we take today, we will save lives.

I want to acknowledge the staff responsible for this effort because we are grateful for their contributions, including Alejandro Roark, Mark Stone, Aaron Garza, Theo Marcus, Wesley Platt, Kristi Thornton, Bambi Kraus, Cara Voth, and Jamie Saloom from the Consumer and Governmental Affairs Bureau; Nicole McGinnis, Austin Randazzo, James Wiley, George Donato, Drew Morin, David Kirschner, Leon Kenworthy, and David Munson from the Public Safety and Homeland Security Bureau; Joy Ragsdale, Joycelyn James, and Chana Wilkerson from the Office of Communications Business Opportunities; Andrew Wise, Cher Li, Susan Lee, Emily Talaga, and Aleks Yankelevich from the Office of Economics and Analytics; and Doug Klein, William Huber, Anjali Singh, Susan Lee, and Erika Olsen from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Wireless Emergency Alerts*, PS Docket No. 15-91; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94; Report and Order (August 7, 2024)

When an AMBER Alert flashes across your screen, you are immediately made aware of three key pieces of information: that a child has gone missing, the identifying details of the child or suspect, and how to report potential sightings to law enforcement. By alerting the surrounding public of the emergency, AMBER Alerts are instrumental in finding and safely returning children to their families.

AMBER Alerts have been a resounding success in safely locating missing individuals, but they have a critical limitation: they are only issued for children age 17 and under. Just last year, thousands of adults went missing or were endangered and fell outside of the criteria to issue an AMBER Alert.

Today's Order closes this critical gap in our public safety infrastructure. By establishing a dedicated Missing and Endangered Persons event code, this Order will assist law enforcement in disseminating critical information to the public to aid in the safe recovery of missing or endangered persons. This three-letter 'MEP' event code harmonizes emergency alerts nationwide to ensure that the public is alerted and prepared to respond during these emergencies. Put simply, this Order will help save lives.

While today's action is sure to benefit communities across the country, it will have a profound impact on Tribal communities whose members face a disproportionate risk of violence, murder, or vanishing. I heard firsthand about the crisis of Missing and Murdered Indigenous Persons during my visit to the community of Bethel, Alaska. In this remote community of 6,000, without major roads and reachable only by boat or by plane, I spoke with and heard from residents about the lack of communications services and the challenges of locating and safely recovering missing members of their community.

Notably, earlier this year, the people of Bethel held their third annual Missing and Murdered Indigenous People March for Justice during the National Week of Action. All across the country, communities like Bethel are doing their part to raise awareness and end this crisis of violence. But they can't do it alone. This Order strengthens our commitment to empowering Tribes to address this crisis by providing critical tools to locate and recover missing and endangered persons.

I want to recognize Native Public Media for their tremendous work and advocacy on this important issue, which spurred this Order. I look forward to their continued engagement. Thank you to the Consumer and Governmental Affairs Bureau and the Office of Native Affairs and Policy for their good work on this item. It has my full support.

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

In the Matter of	)	
	)	
Implications of Artificial Intelligence Technologies	)	CG Docket No. 23-362
on Protecting Consumers from Unwanted	)	
Robocalls and Robotexts	)	

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

Adopted: August 7, 2024

Released: August 8, 2024

Comment Date: [30 days after publication in the Federal Register]

Reply Date: [45 days after publication in the Federal Register]

By the Commission: Chairwoman Rosenworcel and Commissioners Carr, Starks, and Gomez issuing separate statements; Commissioner Simington approving in part, concurring in part, and issuing a statement.

I. INTRODUCTION

1. Artificial intelligence (AI) technologies that generate content are becoming increasingly prevalent and can perform tasks that previously required human action. AI holds great promise in many aspects of daily life. But it also poses considerable potential harms, including facilitating fraud and other deceptions.¹ We have already seen those harms with robocalls.²

2. In this *Notice of Proposed Rulemaking*, we follow up on our recent Notice of Inquiry and propose steps to protect consumers from the abuse of AI in robocalls alongside actions that clear the path for positive uses of AI, including its use to improve access to the telephone network for people with disabilities.³ Specifically, we propose to define AI-generated calls and propose new rules that would require callers disclose to consumers when they receive an AI-generated call. This would provide consumers with an opportunity to identify and avoid those calls that contain an enhanced risk of fraud and other scams. We also propose to adopt protections for consumers to ensure that callers adequately apprise them of their use of AI-generated calls when consumers affirmatively consent to receive such calls. We next propose protections to ensure that positive uses of AI that have already helped people with disabilities use the telephone network can thrive without threat of Telephone Consumer Protection Act

¹ See, e.g., Executive Order No. 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 88 Fed. Reg. 75191 (Oct. 30, 2023) (noting that “irresponsible [AI] use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security”).

² See, e.g., *Steve Kramer*, Notice of Apparent Liability for Forfeiture, FCC 24-59 (rel. May 24, 2024) (proposing a six million dollar fine for apparently illegal robocalls made using AI-generated voice cloning technology and caller ID spoofing to spread election misinformation to potential voters, namely instructions to not vote in an upcoming Primary Election provided in a voice message that was artificially created to imitate the voice of President Joseph R. Biden).

³ In addition to this rulemaking proceeding, the Commission continues to explore other methods to combat the use of AI-generated voice cloning to mislead consumers. For example, the Chairwoman recently asked about the steps telecommunications companies are taking to prevent fraudulent robocalls that use AI for political purposes. See, e.g., Letter from Jessica Rosenworcel, Chairwoman, FCC, to John Stankey, Chief Executive Officer, AT&T Services, Inc. (Jun. 26, 2024), <https://docs.fcc.gov/public/attachments/DOC-403531A1.pdf>.

(TCPA) liability.⁴ In the *Notice of Inquiry*, we seek additional comment and information on developing technologies that can alert consumers to unwanted or illegal calls and texts, including AI-generated calls.

II. BACKGROUND

A. Telephone Consumer Protection Act

3. *Consent and Disclosure Requirements.* The TCPA prohibits initiating “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party” unless a statutory exception applies or the call is “exempted by rule or order by the Commission under [section 227(b)(2)(B)].”⁵ The TCPA also prohibits, without the prior express consent of the called party or an emergency purpose, any call made using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number “assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call” unless a statutory exception applies.⁶ In addition, artificial or prerecorded voice messages (regardless of whether they fall into an exemption) must in most instances state clearly at the beginning of the message the identity of the business, individual, or other entity that is responsible for initiating the call.⁷ The message also must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual during or at the end of the message.⁸

4. *Exemptions.* Section 227(b)(2)(B) authorizes the Commission to adopt exemptions from the TCPA’s prior express consent requirements for artificial or prerecorded voice calls to residential lines that are “not made for a commercial purpose” and for “such classes or categories of calls made for commercial purposes” that the Commission determines will not adversely affect the privacy rights of the called party and do not transmit an unsolicited advertisement.⁹ And section 227(b)(2)(C) authorizes the Commission to exempt from the TCPA’s restrictions for autodialers and artificial or prerecorded voice messages calls to a number assigned to a cellular service “that are not charged to the called party, subject

⁴ See Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. As discussed in more detail below, the TCPA regulates calls made using an “automatic telephone dialing system” or an artificial or prerecorded voice. See 47 U.S.C. § 227(b)(1). Any such call is considered a “robocall” for the purposes of this proceeding.

⁵ See 47 U.S.C. § 227(b)(1)(B). The TCPA excludes from this prohibition calls made for emergency purposes or made solely pursuant to the collection of a debt owed to or guaranteed by the United States. *But see Barr v. American Association of Political Consultants*, 140 S. Ct. 2335 (2020) (striking down provisions exempting calls to collect debt owed to or guaranteed by the United States).

⁶ See 47 U.S.C. § 227(b)(1)(A)(iii). The Commission has concluded that the TCPA’s protections against unwanted calls to wireless numbers encompass both voice calls and text messages, including short message service (SMS) texts, if the call is made to a telephone number assigned to such service. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (2003 TCPA Order); see also *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

⁷ 47 U.S.C. § 227(d)(3); 47 CFR § 64.1200(b)(1). In 2012, the Commission concluded that the Health Insurance Portability and Accountability Act of 1996’s (HIPAA) existing protections already safeguard consumer privacy, and therefore exempted prerecorded healthcare-related calls to residential lines subject to HIPAA from various TCPA requirements including the identification requirement. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1853-54, paras. 60-61 (2012) (2012 TCPA Order).

⁸ 47 CFR § 64.1200(b)(2).

⁹ 47 U.S.C. § 227(b)(2)(B).

to such conditions as the Commission may prescribe as necessary in the interests of the privacy rights [the TCPA] is intended to protect.”¹⁰

5. Over the years, the Commission has adopted exemptions pursuant to these statutory provisions.¹¹ In 2019, Congress enacted the TRACED Act to further aid the Commission’s efforts in combating illegal robocalls.¹² In relevant part, section 8 of the TRACED Act amended section 227(b)(2) of the Communications Act to require that the Commission ensure that any exemption granted under sections 227(b)(2)(B) or (C) allowing callers to make artificial voice, prerecorded voice, or autodialed calls without consent include certain conditions.¹³ Specifically, section 8 requires that any such exemption contain requirements with respect to: “(i) the classes of parties that may make such calls; (ii) the classes of parties that may be called; and (iii) the number of such calls that a calling party may make to a particular called party.”¹⁴

6. *Technology Changes.* The TCPA also authorizes the Commission to “prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone.”¹⁵ In addition, the legislative history of the TCPA reveals that Congress anticipated that the Commission would have the flexibility to apply the TCPA’s privacy protections from unwanted robocalls to future technologies as well as existing technologies.¹⁶ In recent years, the federal government has begun to address emerging AI technologies, including in a recent Executive Order.¹⁷ These recent

¹⁰ *Id.* § 227(b)(2)(C).

¹¹ See 47 CFR § 64.1200(a)(3)(ii-v), (9).

¹² See S. Report No. 116-41, 116th Cong., 1st Sess. 1-2 (2019) (stating that the purpose of the bill is to “aid the American public by helping to reduce illegal and unwanted robocalls” but also noting that not all robocalls are illegal and that “many important services are carried out via robocalls”).

¹³ TRACED Act. § 8(a); 47 U.S.C. § 227(b)(2)(I).

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 227(d)(3).

¹⁶ See 137 Cong. Rec. S18784 (1991) (statement of Sen. Hollings) (“The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies”). The Commission’s interpretation of the TCPA has accounted for new technologies that fell within its scope. See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act*, *Westfax Inc. Petition for Consideration and Clarification*, CG Docket Nos. 02-278, 05-338, Declaratory Ruling, 30 FCC Rcd 8620 (2015) (confirming that an “efax,” a document sent as a conventional fax but then converted and delivered as an electronic email attachment was covered by the TCPA’s consumer protections from unwanted junk faxes).

¹⁷ See, e.g., The White House, U.S. Office of Science and Technology, *Blueprint for an AI Bill of Rights, Making Automated Systems Work for the American People*, <https://www.whitehouse.gov/ostp/ai-bill-of-rights> (discussing “five principles that should guide the design, use, and deployment of automated systems to protect the American public” and citing “From Principles to Practice—a handbook . . . [that includes] detailed steps toward actualizing these principles in the technological design process”) <https://www.whitehouse.gov/ostp/ai-bill-of-rights/#applying> (“This framework describes protections that should be applied with respect to all automated systems that have the potential to meaningfully impact individuals’ or communities’ exercise of: Rights, Opportunities, or Access.”); U.S. Department of Commerce, National Institute of Standards and Technology, *AI Risk Management Framework*, <https://www.nist.gov/itl/ai-risk-management-framework> (“In collaboration with the private and public sectors, NIST has developed a framework to better manage risks to individuals, organizations, and society associated with artificial intelligence (AI). The NIST AI Risk Management Framework is intended for voluntary use and to improve the ability to incorporate trustworthiness considerations into the design, development, use, and evaluation of AI products, services, and systems”); Executive Order No. 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 88 Fed. Reg. 75191 (Oct. 30, 2023) (AI RMF).

initiatives are designed to prepare for and manage the risks to society associated with these evolving technologies and to harness their potential for good.¹⁸

B. AI Notice of Inquiry and Declaratory Ruling

7. On November 16, 2023, the Commission released a Notice of Inquiry seeking to better understand the implications of emerging AI technologies as part of our ongoing efforts to protect consumers from unwanted and illegal telephone calls and text messages under the TCPA.¹⁹ Specifically, the Commission sought comment on how AI technologies can be defined in the context of robocalls and robotexts;²⁰ requested information on how AI technologies may impact consumers, including any potential benefits and risks that these emerging technologies may create;²¹ and asked what next steps we should take to ensure that the Commission can advance its statutory obligation under the TCPA to protect consumers from unwanted and often illegal robocalls and robotexts.²² In response to this request, several commenters confirmed that generative uses of AI technologies are becoming increasingly prevalent, with both potential benefits and risks to consumers.²³ For example, several commenters highlighted the ability of AI-generated technologies such as voice cloning to enhance the potential for fraud and scams.²⁴ Several commenters requested that the Commission provide guidance that outbound calls that make use of AI-generated content must comply with the TCPA's prior express consent obligations.²⁵ One commenter also agreed with the Commission that any steps it takes in this proceeding must ensure that accessibility-related voice applications employing AI are not inadvertently prohibited by the TCPA.²⁶ Other commenters suggested that the Commission mandate methods by which consumers can be made aware of when they are interacting with an AI-generated voice.²⁷

8. On February 8, 2024, the Commission released a Declaratory Ruling confirming that the phrase "artificial or prerecorded voice" as used in the TCPA and the Commission's implementing rules encompasses current AI technologies that resemble human voices and/or generate call content using a prerecorded voice.²⁸ As a result, the Commission made clear that calls that use such technologies fall under the TCPA and the Commission's implementing rules, and therefore require the prior express

¹⁸ See, e.g., AI RMF.

¹⁹ See *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Inquiry, FCC 23-101 (rel. Nov. 16, 2023) (*AI NOI*).

²⁰ *Id.* at paras. 7-13 (citing various federal and state AI definitions).

²¹ *Id.* at paras. 14-23 (noting potential benefits to individuals with disabilities).

²² *Id.* at paras. 24-29.

²³ See, e.g., CTIA Comments at 2; EPIC Comments at 2; Microsoft Comments at 2; Numeracle Comments at 7; Symphony42 Comments at 1; TNS Comments at 4.

²⁴ Digimarc Comments at 1-2 ("The power and availability of generative AI technology to produce human like dialog and simulate voices of those that consumers know and trust is advancing rapidly, posing an ever-increasing risk of fraud to consumers"); First Orion Comments at 2; TNS Comments at 5; USTelecom Comments at 2 ("Scammers and bad actors no doubt will explore emerging, more sophisticated AI-based technologies to further their illegal calling and texting efforts").

²⁵ See, e.g., State AG Reply Comments at 2-3; USTelecom Comments at 4; ZipDX Comments 1.

²⁶ Microsoft Comments at 3.

²⁷ See, e.g., Digimarc Comments at 1-2 (advocating that the Commission require digital watermarks that indicate whether a voice on a robocall is generated by AI); Numeracle Comments at 2 (arguing that call recipients should know exactly what entity is calling them and who from that entity—whether a human or a computer—is communicating with them).

²⁸ See *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17 (rel. Feb. 8, 2024) (*AI Declaratory Ruling*).

consent of the called party to initiate such calls absent an emergency purpose or exemption.²⁹ In addition, the Commission confirmed that our rules require that artificial or prerecorded voice messages generated by AI technologies must provide certain identification and disclosure information for the entity responsible for initiating the call.³⁰

III. NOTICE OF PROPOSED RULEMAKING

9. Complaints regarding unwanted and illegal robocalls and robotexts are consistently the top category of consumer complaints that we receive.³¹ As a result, it is critical that the Commission stay abreast of new technologies that may impact the privacy protections afforded to consumers under the TCPA. We thus propose and seek comment on measures designed to ensure that our rules keep pace with the fast-developing changes in AI technologies. In so doing, we also seek to ensure that our rules do not hinder the potential benefits that AI technologies can offer, including making telecommunications more readily accessible to individuals with disabilities.

A. AI-Generated Call Definition

10. For purposes of identifying the types of calls that would be subject to the new rules proposed below, we propose to define “AI generated call” as “a call that uses any technology or tool to generate an artificial or prerecorded voice or a text using computational technology or other machine learning, including predictive algorithms, and large language models, to process natural language and produce voice or text content to communicate with a called party over an outbound telephone call.”³² We acknowledge that AI technologies are evolving quickly and seek comment both on this proposed definition and on how to best ensure that any definition we adopt keeps pace with these changes.

11. We believe this definition is consistent with federal and state AI definitions cited in the *AI NOI*, and tailored to reflect the privacy protections under the TCPA by focusing on AI-generated voice or text calls used to interact with consumers in outbound telephone calls.³³ For example, the TCPA’s prohibition on using an artificial or prerecorded voice message extends only to outbound calls that are “made” or “initiated” by the caller.³⁴ The TCPA’s requirements do not extend to technologies used to answer inbound calls. As a result, this definition avoids unintentionally encumbering uses of AI technologies that consumers never interact with and widely used existing customer service technologies on inbound calls. In addition, for the new disclosure that we propose today to apply to autodialed text messages, the message would first have to be sent using equipment that meets the definition of an

²⁹ The Commission has exercised its statutory authority to adopt certain exemptions from this prohibition. See 47 CFR § 64.1200(a)(3), (9).

³⁰ *AI Declaratory Ruling* at para. 9 (citing 47 CFR § 64.1200(b)(1), (2)).

³¹ See *FCC Consumer Complaint Data Center*, www.fcc.gov/consumer-help-center-data (last visited May 16, 2024).

³² We use the term “call” in this Notice to include text messages, consistent with Commission and judicial precedent. The Commission has found, and courts have held, that a text message is a call for purposes of the TCPA. See, e.g., *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165; *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016) (“A text message to a cellular telephone, it is undisputed, qualifies as a ‘call’ within the compass of § 227(b)(1)(A)(iii).”); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) (“[W]e hold that a text message is a ‘call’ within the meaning of the TCPA.”). Our proposed definition is intended to require disclosure of AI-generated content on calls because these types of calls create an enhanced risk of fraud through the use of more sophisticated technologies such as voice cloning. Callers that do not use AI-generated content would not have to make such disclosures but remain subject to the TCPA’s requirements on robocalls and robotexts.

³³ See *AI NOI* at para. 8. Although no commenter proposed or supported any specific AI definition in response to the *AI NOI*, one commenter noted that any potential definition in this context should distinguish between generative usage that creates content and discriminative AI that classifies or predicts data and only extend our definition to generative AI. See TNS Comments at 2-3.

³⁴ See 47 U.S.C. § 227(b)(1).

“automatic telephone dialing system” as defined by the TCPA.³⁵ And second, they would need to meet the definition of “AI-generated call” that we propose pursuant to this Notice.³⁶

12. We seek comment on this proposed definition. Is this proposed definition suitable for addressing both the potential benefits and harms raised by AI technology? In other words, does the proposed definition capture the potentially harmful uses of AI that consumers would want an opportunity to avoid by having the option to not get those calls while excluding the positive uses of AI that we would not want to deter with an express prior consent requirement? Is the proposed definition overinclusive or underinclusive? What changes, if any, should the Commission consider in adopting a definition of AI for these purposes?

13. Alternatively, we seek comment on whether it is necessary to define “AI-generated call” with specificity, given that the TCPA expressly covers “artificial or prerecorded voice,” and given that we have already determined that voice cloning and similar technologies qualify under that statutory phrase. If we do not define an AI-generated call in this context, how would callers determine whether the disclosure obligations proposed below apply to the calls and texts messages that they are sending?

B. AI-Generated Call Disclosure

14. We propose and seek comment on new disclosure rules that would apply to AI-generated calls. First, we propose requiring callers making calls using AI-generated artificial or prerecorded voice messages to include clear and conspicuous disclosure that the consumer’s consent to receive artificial and prerecorded calls may include consent to receive AI-generated calls, defined by the proposal we describe above.³⁷ Further, we propose requiring callers making autodialed text messages that include AI-generated content to provide clear and conspicuous disclosure that the consumer’s consent to receive such messages may include consent to receive AI-generated content as defined by the proposal we describe above. Finally, we also propose requiring callers using AI-generated voice to, at the beginning of each call, clearly disclose to the called party that the call is using AI-generated technology. Our rules already require callers to obtain prior express consent from consumers to make artificial or prerecorded voice calls or autodialed calls absent an exemption.³⁸ To facilitate consumers’ ability to make an informed decision to manage unwanted calls, our rules require that callers making artificial or prerecorded voice calls disclose, at the beginning of the message, certain information that would enable the called party to identify the person or entity initiating the call.³⁹ For calls that require the prior express written consent of the called party and which contain AI-generated messages, we propose that the written agreement authorizing delivery of such calls include clear and conspicuous disclosure informing the called party that they specifically authorize the caller to make calls containing AI-generated content.⁴⁰

15. We believe that callers should explicitly inform consumers that they may receive AI-generated autodialed and/or artificial or prerecorded voice calls or texts when obtaining initial consent to place calls as well as at the beginning of any AI-generated voice message. We also believe that consumers have a right to know they will be interacting with AI and to decide whether to continue that

³⁵ See 47 U.S.C. § 227(a)(1).

³⁶ Consistent with our current approach, we also note that the on-call disclosure proposed herein would apply to only voice calls and not text messages. See 47 CFR § 64.1200(b).

³⁷ Under the Commission’s rules, prior express consent can be obtained orally or in writing for informational robocalls that do not contain telemarketing but must be in writing and satisfy certain conditions if the call introduces an advertisement or constitutes telemarketing. See 47 CFR § 64.1200(a)(2), (3).

³⁸ See 47 CFR § 64.1200(a)(1)-(3).

³⁹ *Id.* at § 64.1200(b)(1).

⁴⁰ See 47 CFR § 64.1200(f)(9). For calls that include or introduce advertisements or constitute telemarketing, prior express written consent is required. See *Id.* at § 64.1200(a)(2), (3). Prior express written consent must meet the conditions described in section 64.1200(f)(9) of our rules.

call. While AI technologies may offer benefits and efficiencies that consumers welcome, we seek comment on whether they may also enhance the risk of confusion, fraud, or scams.⁴¹ In the absence of clear disclosure that they are interacting with an AI technology, what, if any, enhanced risk exists that consumers may not be aware of this and thus are impeded in choosing to continue or terminate the call? Should we propose any specific language for such disclosures, or is a general requirement sufficient for this purpose? Commenters advocating for specific language should address whether such a requirement would raise any First Amendment concerns.

16. We seek comment on requiring additional disclosures at the point of consent. For calls that already require prior express consent, would it benefit consumers to require them to provide separate consent to receive AI-generated calls? We believe that, in reliance on our prior express consent framework dating back several decades, many callers have already captured prior express consent to place autodialed and/or artificial or prerecorded voice calls in a manner that comports with the TCPA and our current rules. These callers, many of which are large consumer-facing institutions, rely on these consents at scale to place a large volume of artificial or prerecorded calls on a daily basis. Given this, should our proposed changes to disclosures at the point of consent apply prospectively only? In other words, should we grandfather existing consents to place autodialed and/or artificial or prerecorded voice calls—either indefinitely or for a limited time? Would doing so minimize operational disruptions to obtain new consent? In conjunction with our cost/benefit analysis, we seek comment on the burdens that may be entailed by callers if they are required to disclose to those consumers from whom they already obtained consent that they intend to use AI-generated calls. To what extent would any new disclosure requirements, whether or not applied prospectively, create the risk of unwarranted liability that callers may face for practices that are currently compliant, but may not be going forward? Would retroactive changes frustrate consumers from receiving, and callers from placing, mutually beneficial communications that are wanted and expected? On the other hand, would bifurcating consent risk confusing consumers when they receive AI-generated calls when they believe they withheld consent to receive AI-generated calls? We also seek comment on the potential benefits of such disclosures to those consumers who have already provided their consent to be called. Would pre-call disclosures that AI-generated voice is used, as discussed below, mitigate the harm of receiving an “artificial voice” calls to which consumers already consented, but may not wish to receive in the future?

17. We also seek comment on the potential benefits and drawbacks of any new disclosures, made at the beginning of each AI-generated artificial or prerecorded voice call, that AI-generated voice was used. Would it add value to consumers beyond the current requirement, which is simply that callers must disclose their identity when making an artificial voice or prerecorded call, and not specifically whether the call is an AI-generated call?⁴² Would consumers benefit from new disclosures that apply to “AI-generated calls,” but not to “artificial or prerecorded voice” calls outside the new definition? We note that our rules do not require pre-call disclosures about the technology used in artificial or prerecorded voice calls. Should we consider different approaches that might better promote greater consumer awareness of AI-generated calls while minimizing any burdens such disclosures entail for smaller entities?⁴³ In addition, we seek comment on whether any specific categories or usage of AI-generated calls should be excluded from the pre-call consent or on-call AI-generated disclosure requirements. For example, we propose below to create an exemption for calls made by individuals with disabilities to facilitate their ability to communicate over the telephone network.

⁴¹ A recent NTIA report advises that the government should monitor AI risks and be prepared to act if heightened risks emerge. We seek comment on this “risk-based” approach in the context of AI-generated calls and text messages. See NTIA Report, *Dual-Use Foundation Models with Widely Available Model Weights* (July 2024), <https://www.ntia.gov/sites/default/files/publications/ntia-ai-open-model-report.pdf>.

⁴² 47 CFR § 64.1200(b)(1).

⁴³ As discussed below, we seek further comment on whether there are technologies that can assist consumers to identify and avoid unknowingly receiving AI-generated calls. See *infra* Section IV.

18. We also seek comment on whether the proposed disclosure at the beginning of an AI-generated voice call should include a special tone, icon, badging, or other indication that is visual, auditory, or otherwise to the called party. If so, which means is the most effective and cost efficient to ensure that consumers are made aware of the use of AI-generated content on the call? Should we require that callers provide consumers the option to opt out of AI-generated voice calls if a consumer wishes to continue receiving non-AI robocalls from a caller? If so, how should we effectuate such an option in a way that minimizes the risk of abuse by requiring consumers to make multiple opt-out requests to stop unwanted calls? We seek comment on these and any other related issues in this context.

C. Promoting Access to Telephone Service by Individuals with Disabilities

19. We propose to exercise our authority under sections 227(b)(2)(B) and (C) of the Act to exempt from the TCPA's requirements artificial or prerecorded voice calls made by an individual with a speech or hearing disability using any technology, including artificial intelligence technologies, designed to facilitate the ability of such individuals to communicate over the telephone.⁴⁴ We do so to ensure that our protections against AI abuses do not deter development and use of AI-powered tools that enable people with disabilities to better use the telephone network.⁴⁵ We emphasize that our proposed exemptions extend to the use of any technology that assists individuals with disabilities to communicate by artificial or prerecorded voice and are not limited to AI technologies.⁴⁶ Consistent with our treatment of certain healthcare-related calls, we propose to exempt artificial or prerecorded voice calls made by individuals with speech and hearing disabilities who are using AI-generated voice when making an outbound telephone call in order to assist in communicating with a called party from the TCPA's consent and identification requirements.⁴⁷

20. It is our view that this exemption would be consistent with Congress' and the Commission's emphasis on access to telecommunications services by persons with disabilities as an important national policy objective. In 1990, Congress enacted the Americans with Disabilities Act,⁴⁸ which established the Telecommunications Relay Service (TRS) program.⁴⁹ The intent of section 225, which governs telecommunications services for people who have hearing and speech disabilities, is "to further the [Communication] Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are functionally equivalent to those provided to individuals

⁴⁴ See 47 U.S.C. § 227(b)(2)(B), (C).

⁴⁵ See Letter from Karen Peltz Strauss, Legal Consultant, Voiceitt, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 23-362, at 1-2 (filed Mar. 1, 2024) (Voiceitt *Ex Parte*) (asking that "the Commission not hinder the ability of people with speech disabilities to use AI tools that generate artificial speech for the purpose of being understood on telephone calls").

⁴⁶ Examples of existing technologies that assist individuals with disabilities to communicate by artificial or prerecorded voice include text-to-speech devices, speech-generating devices, and automatic speech recognition for non-standard speech. Text-to-speech devices convert written text into spoken words, allowing users to communicate verbally. See, e.g., Ask.com, *Voice Generator Text To Speech: Empowering Individuals with Disabilities* (Feb. 27, 2024), <https://www.ask.com/news/voice-generator-text-speech-empowering-individuals-disabilities>. Speech-generating devices, also known as augmentative and alternative communication devices, produce synthesized speech based on user input from keyboards, touchscreens, or other input methods. See, e.g., American Speech-Language-Hearing Association, *Augmentative and Alternative Communication (AAC)*, <https://www.asha.org/public/speech/disorders/aac/> (last visited June 13, 2024). Automatic speech recognition for non-standard speech analyzes spoken words by people with speech disabilities, aging adults, and accented speakers and then synthesizes speech (or creates speech-to-text) on their behalf. See e.g., Voiceitt *Ex Parte* at 1-2.

⁴⁷ See 2012 TCPA Order, 27 FCC Rcd at 1853-54, para. 60. See also Voiceitt *Ex Parte* (asking the Commission to exempt people with disabilities using "computer-generated assistive speech technologies from TCPA mandates that could require them to disclose to, or obtain written consent from, call recipients").

⁴⁸ Pub. L. No. 101-336, 104 stat. 327 (1990).

⁴⁹ 47 U.S.C. § 225.

without hearing or speech disabilities.”⁵⁰ In 1996, Congress recognized that, with the nation’s “increasing dependence on telecommunications tools, people with disabilities remain unable to access many products and services that are vital to full participation in our society.”⁵¹ Accordingly, Congress added section 255 of the Communications Act “to amend this situation by bringing the benefits of the telecommunications revolution to all Americans, including those who face accessibility barriers to telecommunications products and services.”⁵² In addition, the Commission has recognized the importance of accessibility, explaining that “the federal government must promote innovative and affordable solutions to ensure that people with disabilities have equal access to communications services and that they do not bear disproportionate costs to obtain that access.”⁵³

21. *Residential Telephone Exemption.* As discussed above, section 227(b)(2)(B) authorizes the Commission to adopt, by rule or order, exemptions from the TCPA’s requirements for artificial or prerecorded voice calls to residential telephone lines that are “not made for a commercial purpose” and for “such classes or categories of calls made for commercial purposes” that do not adversely affect the privacy rights of the called party and do not transmit an unsolicited advertisement.⁵⁴ We tentatively conclude pursuant to both these provisions that an exemption for the use of AI and other related technologies that assist individuals with disabilities to communicate by artificial or prerecorded voice over the telephone to residential telephone lines would promote the public interest in substantial ways by ensuring that beneficial uses of these technologies are not impeded by the TCPA’s requirements. Consistent with the statutory requirement, we also propose that calls made under this exemption must not contain any unsolicited advertisement. We seek comment on this proposal.

22. Access to telecommunications services is an increasingly critical tool in our society with increasing numbers of people using such services to work from home, learn in educational settings, access healthcare, access government and emergency services, and keep in touch with family and friends. This is particularly critical for individuals with disabilities.⁵⁵ In addition, we find no reason to believe that the

⁵⁰ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4657, para. 2 (1991); *see also*, 47 U.S.C. § 225(b)(1).

⁵¹ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6419, para. 1 (1999) (*Section 255 Order*). Section 255 was enacted as part of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵² *Section 255 Order*, 16 FCC Rcd at 6419, para. 1.

⁵³ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at Recommendation 9.5 (Mar. 16, 2010), <https://docs.fcc.gov/public/attachments/DOC-296935A1.pdf>.

⁵⁴ 47 U.S.C. § 227(b)(2)(B). In 1992, the Commission exempted by rule artificial and prerecorded voice calls to residential telephone lines that are not made for a commercial purpose and calls made for a commercial purpose that do not contain an unsolicited advertisement. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8773-74, paras. 40-41 (1992) (*1992 TCPA Order*) (noting that artificial or prerecorded voice messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by the TCPA). In addition, the Commission concluded that calls from tax-exempt nonprofit organizations are exempt from the prohibition on artificial and prerecorded-voice message calls to residences as non-commercial calls. *1992 TCPA Order*, 7 FCC Rcd at 8773-74, para. 40.

⁵⁵ The Commission has recognized that the use of communications services can improve daily lives and can be critical to receiving emergency care, obtaining jobs and participating in the work force, living independently, and having access to friends, colleagues and peers and that people with disabilities have often faced additional barriers or disadvantages to obtaining such benefits. It is therefore especially important to ensure telecommunications services are accessible to and usable by people with disabilities. *See, e.g., Safeguarding and Securing the Open Internet*, WC Docket Nos. 23-320, 17-108, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, para. 55 (Apr. 25, 2024); *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320,

(continued....)

privacy interests that section 227 is designed to protect will be adversely affected by this limited exemption. For example, we do not expect the volume of such calls to be significant. Moreover, because such calls cannot contain unsolicited advertisements, we predict that most calls made to residential lines pursuant to this exemption will primarily be made to individuals who are often expecting them (e.g., friends, family). We seek comment on this view. Would our proposed exemption benefit persons with disabilities and encourage development of technologies that assist persons with disabilities in communicating by telephone? Could the exemption be abused, for example, by scammers who attempt to use those technologies to defraud or otherwise harm consumers? If so, how can we modify our proposal to avoid such abuses?

23. *Wireless Exemption.* As discussed above, section 227(b)(2)(C) authorizes the Commission to exempt from this the TCPA's restrictions, by rule or order, calls to a number assigned to a cellular service "that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interests of the privacy rights."⁵⁶ For similar reasons to those discussed above, we tentatively conclude that the use of AI and other related technologies that assist individuals with disabilities to communicate by artificial or prerecorded voice in calls to wireless telephone numbers should not be impeded by the TCPA's requirements. We therefore propose to exempt such calls pursuant to the condition that they must not contain any telemarketing or advertisement. We believe that compliance with this condition would not unduly impair the ability of individuals with disabilities to use the telephone network or impose burdensome compliance obligations. We seek comment on this proposal.

24. The statute requires that any calls to wireless telephone numbers that are exempted from the TCPA's restrictions be "not charged to the called party."⁵⁷ We seek comment on how this condition can be satisfied in our proposal. We believe that it is unreasonable to expect individuals with disabilities to ascertain in every instance whether the called party is charged for an incoming call. As noted above, the TCPA authorizes the Commission to "prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone."⁵⁸ Could we require or encourage wireless providers and others under this or other authority to ensure that these calls are not charged to the called party? Are there other alternative solutions that we should consider? The Commission has concluded that the TCPA's "not charged" requirement precludes exempting incoming calls that count against the recipient's allotted minutes or texts.⁵⁹ Given the substantial public interest considerations, should we take a different view in this context? To what extent is the "not charged to the called party" condition a practical impediment to the use of the exemption in the current wireless

Notice of Proposed Rulemaking, FCC 23-83, para. 121 (2023); *Supporting Survivors of Domestic and Sexual Violence; Lifeline and Linkup Reform Modernization; Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-460, Report and Order, FCC 23-96, para. 60 (2023); *Access to Video Conferencing, Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, et al.*, CG Docket Nos. 23-161, 10-213, 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, 38 FCC Red 6300, paras. 1-2 (2023); Federal Communications Commission, Consumer and Governmental Affairs Bureau, *Strategies and Recommendations for Promoting Digital Inclusion*, Report at 7, available at <https://www.fcc.gov/document/strategies-and-recommendations-promoting-digital-inclusion> (Jan. 2017).

⁵⁶ 47 U.S.C. § 227(b)(2)(C).

⁵⁷ See 47 U.S.C. § 227(b)(2)(C).

⁵⁸ 47 U.S.C. § 227(d)(3).

⁵⁹ See, e.g., *Cargo Airline Association Petition for Expedited Declaratory Ruling*, CG Docket 02-278, 29 FCC Red 3432, 3436, para. 12 (2014); 47 CFR § 64.1200(a)(9).

marketplace? For example, to what extent are wireless consumers still charged for incoming calls?⁶⁰ We seek comment on these and any other considerations relevant to our proposal.

25. *TRACED Act.* We tentatively conclude that the exemptions discussed above satisfy the relevant provisions of the TRACED Act.⁶¹ Section 8 of the TRACED Act amended section 227(b)(2) of the Communications Act to require that the Commission ensure that any exemption granted under sections 227(b)(2)(B) or (C) allowing callers to make artificial voice, prerecorded voice, or autodialed calls without consent include certain conditions.⁶² Specifically, section 8 requires that any such exemption contain requirements with respect to: “(i) the classes of parties that may make such calls; (ii) the classes of parties that may be called; and (iii) the number of such calls that a calling party may make to a particular called party.”⁶³

26. We propose that the “class of parties that may make such calls” under the exemption is any individual with a speech or hearing disability that utilizes an AI or other technology to assist in communicating by artificial or prerecorded voice over the telephone. We believe this class of individuals is sufficiently clear. We seek comment on whether we need to broaden this class of parties to ensure that we encompass any other individuals with disabilities who make use of artificial or prerecorded voice technologies to communicate over the telephone. If so, how should we define this class of parties? At this time, we will not require that individuals demonstrate proof of such a disability, because we find that such a requirement would be potentially burdensome and a potential privacy invasion given the lack of any basis at this time to conclude that there are grounds for abuse. We propose that “the classes of parties that may be called” in this instance extends to calls made to parties for purposes that do not include unsolicited advertising or telemarketing. In this instance, the public policy goal of ensuring that individuals with disabilities are not encumbered with any impediments from telephone usage exceeds any concern regarding adverse privacy risks, which seem to be minimal in this context. We seek comment on this proposal.

27. Lastly, we tentatively conclude that limiting such calls to those that do not include unsolicited telemarketing establishes a functional limit on the number of such calls made in this context (*i.e.*, individuals with hearing or speech disabilities utilizing artificial or prerecorded voice technologies on calls in which they are present and communicating) that is consistent with the objectives of promoting access to telephone service by individuals with disabilities. We tentatively conclude that “the number of such calls that a calling party may make” should not be a specific numerical limitation in this context because such a limitation would risk depriving individuals with disabilities of basic access to telephone service while necessitating that they track the number of such calls that they are making each day, an outcome inconsistent with national policy objectives and laws designed to promote such usage.

28. We seek comment on these tentative conclusions, including any alternative means to satisfy the TRACED Act’s requirements in a way that promotes access to telephone service without unduly burdening individuals with disabilities.

29. *Alternatives.* As an alternative to creating an exemption for artificial or prerecorded voice calls made by an individual with a speech or hearing disability using any technology, including

⁶⁰ We note that in a recent TCPA docket that one commenter indicates that most wireless offerings now provide customers with unlimited call and texting plans for which they are not charged for incoming calls and messages. See NCLC Comments in CG Docket No. 02-278 at 3 (filed Apr. 4, 2024).

⁶¹ As noted above, the Commission has adopted various exemptions to the TCPA’s restrictions on autodialed and artificial and prerecorded voice calls including ensuring that such exemptions comply with conditions of the TRACED Act. See 47 CFR § 64.1200(a)(3)(ii-v), (9). We note that because the Commission has confirmed that AI-generated voice calls are artificial or prerecorded voice calls under the TCPA that these exemptions apply to AI-generated calls that qualify for these existing exemptions.

⁶² TRACED Act. § 8(a).

⁶³ *Id.*

artificial intelligence technologies, designed to facilitate the ability of such individuals to communicate over the telephone, we seek comment on whether we can define “artificial or prerecorded voice” in a way that excludes from the requirements of the TCPA the use of technologies that are designed to assist individuals with disabilities to communicate by voice over the telephone network. We note that the TCPA does not define the terms “artificial” or “prerecorded voice.” As a result, can we define those terms in a way that would allow these types of calls by individuals with disabilities?

30. In addition, do our obligations to ensure that telecommunications and advanced communications services and equipment be accessible and usable by people with disabilities authorize us to exclude positive uses of AI and other technologies that benefit individuals with disabilities from the TCPA’s restrictions on the use of artificial or prerecorded voice messages?⁶⁴ How would we reconcile such an approach with the Commission’s prior rulings in the *Soundboard Declaratory Ruling* confirming that the presence of a live agent on a call selecting the prerecorded messages to be played “does not negate the clear statutory prohibition against initiating a call using a prerecorded or artificial voice”⁶⁵ and the *AI Declaratory Ruling* in which the Commission found that AI and other technologies that generate human voices fall within the TCPA.⁶⁶ How could we ensure any such approach does not create a loophole that could be used by telemarketers or bad actors to circumvent the TCPA’s protections? We seek comment on these and other alternatives that might assist us in formulating a means to ensure that the TCPA’s restrictions on robocalls do not inadvertently impede the ability of individuals with disabilities to use the telephone network.

D. Costs and Benefits

31. We seek comment on the potential costs and benefits of taking any of our proposed regulatory measures to address the use of AI technologies. Specifically, we seek comment on whether and to what degree the changes we propose here will improve consumers’ ability to identify, manage, and benefit from the use of calls that contain AI-generated voices. In addition, we seek comment on any potential costs of our proposals on callers, including smaller entities, to disclose the use of AI-generated technologies and honor requests not to make such calls to consumers who do not provide consent. We seek comment on these and any other considerations that may shed light on the potential costs and benefits of adopting our proposals.

E. Legal Authority

32. *TCPA.* We tentatively conclude that section 227 provides us with legal authority to adopt the our proposals. As noted above, the TCPA authorizes the Commission to make “technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone.”⁶⁷ In addition, the legislative history contemplated the Commission’s need for the flexibility

⁶⁴ See 47 U.S.C. §§ 255, 617; see also *Voiceitt Ex Parte* (discussing the need for the FCC to take in consideration and address the application of section 255 and other applicable federal laws specifically requiring access to telecommunications and advanced communications services by people with disabilities).

⁶⁵ See *Rules and Regulations Implementing the Telephone Protection Act of 1991*, *NorthStar Alarm Services LLC’s Petition for Expedited Declaratory Ruling*, *Yodel Technologies Petition for Expedited Declaratory Ruling or in the Alternative Retroactive Waiver*, CG Docket No. 02-278, Declaratory Ruling and Order, 35 FCC Rcd 14640 at 14643-45, paras. 11-16 (2020) (confirming that the TCPA applies to any telephone call that is initiated using an artificial or prerecorded voice message and rejecting arguments that the TCPA allows a carve out for prerecorded calls that are functionally equivalent to a conversation with a live agent).

⁶⁶ See *AI Declaratory Ruling* at para. 5 (concluding that “voice cloning” falls within the TCPA’s existing prohibition on artificial or prerecorded voice messages because this technology artificially simulates a human voice).

⁶⁷ See 47 U.S.C. § 227(d)(3).

to address future technologies that impact the TCPA's consumer privacy protections from unwanted robocalls.⁶⁸

33. The TCPA also prohibits the use of an artificial or prerecorded voice message in calls to a residential or wireless telephone number absent the prior express consent of the called party or a recognized exemption.⁶⁹ The Commission has recently confirmed that the TCPA's restrictions on the use of "artificial or prerecorded voice" encompass current AI technologies that resemble human voices and/or generate call content using a prerecorded voice.⁷⁰ As a result, we believe that the proposals set forth herein to disclose the use of AI-generated calls and exempt individuals with disabilities from the TCPA's prohibitions on artificial or prerecorded voice calls are authorized by the TCPA. We seek comment on this tentative conclusion including whether any other legal authorities such as those that govern the provision of communications services to individuals with disabilities may lend additional support to our tentative conclusion.⁷¹ Alternatively, is there any reason to conclude that these existing legal authorities do not provide the Commission with sufficient statutory authority to ensure that the use of emerging AI technologies, as we propose to define it, does not erode consumer protections under the TCPA?

F. Digital Equity and Inclusion

34. The Commission, as part of its continuing effort to advance digital equity for all,⁷² 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 considerations⁷³ and benefits (if any) that may be associated with our proposals. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. NOTICE OF INQUIRY

A. Real-Time Call Detection, Call Alerting, and Call Blocking Technologies

35. We seek comment on the development and availability of technologies on either the device or network level that can: 1) detect incoming calls that are potentially fraudulent and/or AI-generated based on real time analysis of voice call content; 2) alert consumers to the potential that such voice calls are fraudulent and/or AI-generated; and 3) potentially block future voice calls that can be identified as similar AI-generated or otherwise fraudulent voice calls based on analytics. Specifically, what steps can the Commission take to encourage the development and deployment of these technologies,

⁶⁸ 137 Cong. Rec. S18784 (1991) (statement of Sen. Hollings) ("The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies").

⁶⁹ See 47 U.S.C. § 227(b)(1).

⁷⁰ See *AI Declaratory Ruling* at para. 5.

⁷¹ See e.g., 47 U.S.C. §§ 225, 255.

⁷² Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

⁷³ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

including to consumers regardless of their economic means or the type of telephone service to which they subscribe? Further, we seek comment on the privacy implications of call detection technologies that analyze the content of calls in real time to identify calls that are potentially fraudulent and/or feature AI-generated voice without the required disclosure proposed above. To that end, we ask whether the Commission should adopt rules governing the use of call detection, alerting, or blocking technologies to protect the privacy of both callers and called parties.

36. The record highlights several examples of call detection and alerting technologies that can help detect scam calls or calls that use AI-generated voice based on real time content analysis of the incoming call. For example, Google announced it is “testing a new call monitoring feature that will warn users if the person they’re talking to is likely attempting to scam them and encourage them to end such calls.”⁷⁴ This technology will “utilize Gemini Nano — a reduced version of the company’s Gemini large language model for Android devices that can run locally and offline — to look for fraudulent language and other conversation patterns typically associated with scams. Users will receive real-time alerts during calls where these red flags are present.”⁷⁵ Other technologies under development seek to authenticate human voice as a method of thwarting calls featuring AI-generated voices, such as scam calls that do not disclose the use of AI. For example, OriginStory states it is developing a new technique that “authenticates the human origin of voice recordings at the point of creation and then embeds this authentication as a watermark or signature in the stream, establishing a chain of trust from the moment the voice is captured to when it reaches the listener.”⁷⁶ Microsoft’s Azure Operator Call Protection is a data-based service offered to telephone service providers at the network level that “detects potential phone scams, performs real-time AI-driven analysis of consumer phone calls, and alerts subscribers when they are at risk of being scammed.”⁷⁷ The same technologies capable of detecting scam calls or calls using AI-generated voice could potentially be programmed to block future calls that can be identified as similar based on analytics.⁷⁸ How far along are these and similar technologies in development? Have they proven useful in protecting consumers? Are there other examples of these kinds of technologies in existence today or in development, including any capable of detecting AI-generated voice? To ensure that providers do not interfere with consumer privacy rights as part of AI detection efforts, we emphasize that they must continue to comply with existing federal and state laws regarding lawful interception, including the Electronic Communications Privacy Act (ECPA), and that nothing discussed herein proposes to alter any prohibitions under existing statutes.⁷⁹

⁷⁴ Jess Weatherbed, *Android is getting an AI-powered scam call detection feature* (May 14, 2024), <https://www.theverge.com/2024/5/14/24156212/google-android-ai-gemini-scam-call-detection-feature-io>.

⁷⁵ *Id.*

⁷⁶ Letter from Visar Berisha, PhD, OriginStory, CG Docket No. 23-362 (filed May 29, 2024) (OriginStory *Ex Parte*).

⁷⁷ Letter from Paula Boyd, Senior Director, U.S. Government Affairs, Microsoft, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 23-362 (filed Mar. 22, 2024) (Microsoft *Ex Parte*).

⁷⁸ In the present proceeding, we focus primarily on technologies that conduct real-time analysis of call content to detect scam calls or calls using AI-generated voice. We note, however, that the Commission has a well-developed framework for blocking scam calls, including a safe harbor from liability under the Communications Act and the Commission’s rules for the unintended or inadvertent blocking of wanted calls so long as such action is based upon reasonable analytics and caller ID authentication information indicating that such calls were unwanted and therefore should be blocked. *See Advanced Methods to Target and Eliminate Unlawful Robocalls; Alarm Industry Communications Committee Petition for Clarification or Reconsideration; American Dental Association Petition for Clarification or Reconsideration*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622-31, para. 18-45 (2020) (“*July 2020 Call Blocking Order*”).

⁷⁹ *See, e.g.*, Pub. L. No. 99-508, 100 Stat. 1848 (1986).

37. Should the Commission act to further the development and deployment of such technologies? Are there legal, technical, and/or practical barriers to wide-scale deployment and adoption of such applications? Does the Commission have the statutory authority and technical expertise to address these barriers? To what extent do these technologies duplicate or complement STIR/SHAKEN and other caller ID authentication solutions? How do issues regarding IP interconnection across voice service networks impact the ability of providers to enable real-time monitoring of voice traffic using AI technologies? Will technologies that enable real-time monitoring of voice traffic require service providers to upgrade their network infrastructure? If so, how long and at what cost will it take providers to upgrade their networks? Do these technologies require new devices at potentially greater cost to consumers? Will these detection and alerting technologies be provided to consumers at an additional cost, thereby increasing the overall cost of voice services to consumers? How can the Commission ensure the benefits of these technologies are available to all consumers, including across the various mobile telephone platforms, as well as on landlines? For example, how do these technologies monitor robocalls in languages other than English? Should these technologies monitor languages based on population, subscriber preference, Census data, or some other appropriate metric? What role should industry standards play in the development and implementation of call detection technologies that analyze call content in real time such as those discussed above? Do these technologies risk blocking or inhibiting legitimate AI-generated calls, such as public safety calls, calls from people with disabilities using AI-enabled services, or other exempted calls? If so, how will they mitigate the inadvertent blocking of such calls and messages?

B. Privacy Implications of Real-Time Call Detection, Call Alerting, and Call Blocking Technologies

38. While the AI-enabled call detection, alerting, and blocking technologies discussed above promise to be effective tools in protecting consumers from unwanted calls, including scam calls, we believe that these tools pose *significant* privacy risks, insofar as they appear to rely on analysis and processing of the content of calls—which are very sensitive data—by application or device providers, who already have access to the personally identifiable information (PII) of their users. Accordingly, we seek comment on the privacy implications of call detection, alerting, and blocking technologies. We also seek comment on whether Commission should consider requirements to protect the privacy of callers and called parties, and, if so, what such requirements should be. If we adopt privacy requirements in this area, should we rely on notice-and-consent principles, or should we instead adopt substantive protections such as minimization requirements for data collection, purpose limitations for data processing, and categorical restrictions on sharing and disclosure?⁸⁰

39. We first seek comment on how these technologies capture and analyze call content data and on any steps that developers and users of these tools can use or are already using to protect the privacy of both callers and called parties. How do these systems process call content data? Do these systems store call data on the device or at the network level? If so, for how long? Do these applications anonymize data while the data are being analyzed? How do they store such data, and do they share it with third parties? If they do share such data, for what purposes, and how do they ensure that third parties cannot use the data for extraneous or unrelated commercial purposes? Do providers of these technologies and applications make their data practices clear to consumers? Do they provide notice to the caller and rely on opt-out or opt-in consent, prior to their initiation? Do they provide notice and enable consent to called parties? We also seek comment on what rights are afforded to consumers with respect to any data collected? Can consumers view those data? Correct those data? Request destruction of those data? Are the data portable? Do these systems ensure malicious actors cannot access these data? To what purposes do entities that offer these applications and technologies currently process any data they collect? What

⁸⁰ See, e.g., Remarks of Samuel Levine, Director, Bureau of Consumer Protection, *Toward a Safer, Freer, and Fairer Digital Economy*, Fourth Annual Reidenberg Lecture, Fordham Law School (Apr. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/20240417-Reidenberg-Lecture-final-for-publication-Remarks-Sam-Levine.pdf.

are the valid or reasonably related purposes to which such entities should be permitted to process the collected data?

40. We also seek comment on what Federal and state privacy laws already apply to the use of call detection, alerting, and blocking technologies, including the Electronic Communications Privacy Act (ECPA)⁸¹ and state wiretapping and interception laws? Do these laws address the privacy concerns identified above?

41. To the extent commenters do not think that provider practices or existing laws are sufficient, we next seek comment on whether and how the Commission should address the privacy concerns discussed above. Starting with the traditional privacy principles of notice and consent, should the Commission adopt a rule requiring consent of the called party prior to analyzing any incoming calls? Should the caller be afforded notice and consent? If so, would this potentially frustrate the benefits of call detection, alerting, and blocking technologies, by allowing malicious actors to effectively veto their use? If not, what protections exist for non-malicious callers who have a legitimate privacy interest in not having the contents of their calls collected and processed by unknown third parties? What level of consent is appropriate for the called party and, to the extent applicable, the caller?

42. We also seek comment on whether substantive privacy protections might be more appropriate in this area than notice and consent requirements. For example, should the Commission adopt rules that prohibit or limit to some degree any technology or application that analyzes the content of calls in real time from: 1) recording the content of the call; 2) retaining a transcript, recording, or meta data associated with the call; 3) disclosing the content of the call to any person or other party; and/or 4) using the analysis of the call for any other purpose than determining whether to identify and alert the recipient that a call is likely to be fraudulent or AI-generated? We believe that rules such as these would be consistent with the privacy protections that parties developing AI-enabled call analytic systems acknowledge are required under existing federal law.⁸² Would such rules help prevent unscrupulous purveyors of similar call detection applications from violating consumers' privacy while also creating an additional layer of protection against privacy violations by virtue of the Commission's rulemaking and enforcement authority? How could we craft such rules to ensure that they protect consumer privacy without disrupting existing services that combat robocalls? For example, would consent-based exemptions accomplish this goal?⁸³

43. We also seek comment on how developers train the large language models that aid in call detection, alerting, and blocking technologies. What data sets do developers use to train the large model, and do they include call data? How do these applications ensure compliance with federal and state wiretap laws, including states with two-party consent requirements?⁸⁴ Should the Commission require standards to limit the use of personal information for training AI models used for call content analysis?

⁸¹ Pub. L. No. 99-508, 100 Stat. 1848 (1986).

⁸² See, e.g., Microsoft Comments at 4 (“AI-enabled fraud detection tools could be engineered so as not to ‘acquire’ the contents of any oral communications in any functional sense, relying instead on only transient transcripts of the content of communications that can be fed through advanced algorithmic models to provide real-time analysis and notification to the called party, without storing the analysis or communications content or creating any additional opportunities for disclosure. Moreover, generative AI creates the possibility of accomplishing fraud detection objectives without affording any natural person with access to the content of communications or a transcript thereof. These safeguards can ensure that an AI-enabled fraud detection tool does not implicate the core concern that the Wiretap Act was designed to protect against – unauthorized government and third party access to communications content.”).

⁸³ See, e.g., YouMail, About Us, <https://www.youmail.com/> (last visited June. 18, 2024). YouMail is a third-party robocall identification and blocking service.

⁸⁴ See Microsoft Comments at 4-7.

44. As the Commission considers the necessity of such rules discussed above, we seek comment on whether the Communications Act grants the Commission the authority to adopt rules regarding the implementation of any AI-enabled call detection, alerting, or blocking technologies, including by adopting specific requirements to protect subscribers' privacy. Section 227(c) of the Communications Act directs the Commission to "protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object."⁸⁵ To do this, the Act directs the Commission "to compare and evaluate alternative methods and procedures (including the use of electronic databases, *telephone network technologies*, special directory markings, industry-based or company-specific 'do not call' systems, and any *other alternatives*, individually or in combination) for their effectiveness in protecting such privacy right."⁸⁶

45. Finally, the Act directs the Commission to "develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section."⁸⁷ We seek comment on whether the call detection, alerting, and blocking technologies we discuss constitute both a telephone network technology and an alternative method identified by the Commission that protects subscriber's privacy rights to avoid receiving objectionable telephone solicitations. Does the Commission have the authority to develop regulations related to the methods and procedures for the implementation of any AI-enabled call detection, alerting, and blocking technologies?

C. Other

46. *NIST AI Risk Management Framework*. On January 26, 2023, the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) released the NIST AI Risk Management Framework (AI RMF) "to offer a resource to the organizations designing, developing, deploying, or using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems."⁸⁸ We seek comment on how this framework could further the Commission's understanding related to the risks surrounding the use of AI technologies to combat unwanted and fraudulent calls.

V. PROCEDURAL MATTERS

47. *Paperwork Reduction Act*. This document may contain new or modified information collection requirements subject to PRA, Public Law 104-13. 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."

48. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended, (RFA),⁸⁹ 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

⁸⁵ 47 U.S.C. § 227(c)(1).

⁸⁶ 47 U.S.C. § 227(c)(1)(A) (emphasis added).

⁸⁷ 47 U.S.C. § 227(c)(1)(E).

⁸⁸ *Artificial Intelligence Risk Management Framework (AI RMF 1.0)*, National Institute of Standards and Technology, U.S. Department of Commerce (January 2023), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

⁸⁹ 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).

economic impact on a substantial number of small entities.”⁹⁰ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

49. *Ex Parte Rules*. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.⁹²

50. *Filing of Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- 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.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

⁹⁰ 5 U.S.C. § 605(b).

⁹¹ 47 CFR §§ 1.1200 *et seq.*

⁹² 47 CFR § 1.49(f).

51. *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).

52. *Availability of Documents.* This *Notice* will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

53. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

54. *Additional Information.* For additional information on this proceeding, contact Richard D. Smith, Richard.Smith@fcc.gov or (717) 338-2797, or Noah Cherry, Noah.Cherry@fcc.gov or 202-418-7835, Consumer and Governmental Affairs Bureau, Consumer Policy Division.

VI. ORDERING CLAUSES

55. Accordingly, **IT IS ORDERED**, pursuant to sections 1-4, 225, 227, 255, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 151-154, 227, 255, and 403 that this *Notice of Proposed Rulemaking* and *Notice of Inquiry* is hereby **ADOPTED**.

56. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* and *Notice of Inquiry* on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

57. **IT IS FURTHER ORDERED** that the Commission's Office of Secretary, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

For the reasons discussed above, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

Part 64 – Miscellaneous Rules Relating to Common Carriers

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Part 64 is amended by adding paragraphs (a)(3)(vi), (a)(9)(v), and (a)(13), revising (b)(1), and (f)(9) and adding (f)(20) to read as follows:

* * * * *

§ 64.1200 Delivery Restrictions

(a) * * *

(3) * * *

(vi) Is made by an individual with a speech or hearing disability using any technology, including artificial intelligence technologies, designed to facilitate the ability of such individuals to communicate using an artificial or prerecorded voice over the telephone and does not include or introduce an advertisement or constitute telemarketing.

* * * * *

(9) * * *

(v) Calls made by individuals with speech or hearing disabilities using any technology, including artificial intelligence technologies, designed to facilitate the ability of such individuals to communicate using an artificial or prerecorded voice over the telephone, provided that the calls must not include any telemarketing or advertising content.

* * * * *

(13) Callers making an AI-generated call subject to the requirements contained in paragraphs (a)(1)-(3) of this section must provide clear and conspicuous disclosure that they intend to use AI-generated voice or text content on such calls when obtaining the prior express consent of the called party.

(b) * * *

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call, **and disclose whether the call uses an artificial**

intelligence-generated voice. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated;

(f) * * *

(9) * * *

(i) * * *

(C) For AI-generated calls, that the caller intends to make use of AI-technology to generate voice or text content and the person signing the agreement specifically agrees to receive calls that include AI-generated content.

* * *

(20) The term *AI-generated call* means a call that uses any technology or tool to generate an artificial or prerecorded voice or a text using computational technology or other machine learning, including predictive algorithms, and large language models, to process natural language and produce voice or text content to communicate with a called party over an outbound telephone call.

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Notice*. The Commission will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The Commission initiates this proceeding to protect consumers from unwanted robocalls by proposing rules to address the emerging use of AI technologies to ensure that consumers continue to receive the protections afforded under the Telephone Consumer Protection Act (TCPA). The TCPA sets forth specific requirements relating to the use of artificial and prerecorded voice messages in telephone calls. As the use of AI-generated calls becomes increasingly prevalent, it is critical that our rules ensure that consumer privacy is not eroded by the use of these emerging technologies. The proposed rules are therefore designed to ensure that the Commission's rules keep pace with technological changes while not impeding the beneficial uses of AI technologies. Specifically, we propose to define AI-generated calls to ensure that consumers know when they receive an AI-generated call; to adopt protections for consumers to ensure that callers adequately apprise them of their potential use of AI-generated calls when consumers consent to receive such calls; and to ensure that positive uses of AI that assist people with disabilities to use the telephone network can thrive without threat of TCPA liability.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1-4, 225, 227, 255, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 225, 227, 255, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A "small

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Id.* § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We, therefore describe at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2022 Census of Governments¹⁵ indicate there were 90,837 local governmental jurisdictions consisting of general

⁷ 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ See 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data does includes information for Puerto Rico (469).

¹⁴ See 5 U.S.C. § 601(5).

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,845 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 11,879 special purpose governments—independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²¹

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²² Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²³ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁵

¹⁶ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-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. CG2200ORG02 Table Notes Local Governments by Type and State 2022.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05]. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06]. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10]. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04].

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²³ *Id.*

²⁴ *Id.*

²⁵ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁷ Of this number, 2,964 firms operated with fewer than 250 employees.²⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.²⁹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these service providers.³¹ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³³ Of this number, 2,837 firms employed fewer than 250 employees.³⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.³⁵ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.³⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Telemarketing Bureaus and Other Contact Centers.* This industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client's products or services.³⁷ These establishments do

²⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁰ *Id.*

³¹ 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>.

³² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³⁶ *Id.*

³⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "561422 Telemarketing Bureaus and Other Contact Centers," <https://www.census.gov/naics/?input=561422&year=2017&details=561422>.

not own the product or provide the services they are representing on behalf of clients.³⁸ The SBA small business size standard for this industry classifies firms having \$25.5 million or less in annual receipts as small.³⁹ According to U.S. Census Bureau data for 2017, there were 2,250 firms in this industry that operated for the entire year.⁴⁰ Of this number 1,435 firms had revenue of less than \$10 million.⁴¹ Based on this information, the majority of firms in this industry can be considered small under the SBA small business size standard.

12. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.⁴² These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.⁴³ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.⁴⁴ U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.⁴⁵ Of this number, 177 firms operated with fewer than 250 employees.⁴⁶ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

13. The *Notice* seeks comment on issues that may alter the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Specifically, the *Notice* proposes and seeks comment on how to define AI in a way that is relevant to fulfilling the Commission's statutory responsibilities under the TCPA, requiring callers to disclose when a caller uses an AI-generated voice, removing impediments to beneficial uses of AI to promote access to telephone service by individuals with disabilities, and requests information on additional call blocking and call alerting technologies that can assist consumers in avoiding unwanted AI-generated calls or scams,

³⁸ *Id.*

³⁹ See 13 CFR § 121.201, NAICS Code 561422.

⁴⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 561422, <https://data.census.gov/cedsci/table?y=2017&n=561422&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual 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.

⁴² See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

⁴³ *Id.*

⁴⁴ See 13 CFR § 121.201, NAICS Code 334210.

⁴⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

including whether we should require specific language for the disclosure, or audio-visual prompts that indicate an AI-generated voice is being used. Affected small entities may need to alter existing calling practices when making calls that contain an AI-generated voice to disclose to the called party that the call is using an AI-generated technology. Measures may have to be taken by small telecommunications providers or equipment makers to ensure that individuals with disabilities can use technologies to make calls that contain artificial or prerecorded voices without running afoul of the TCPA.

14. The Commission invites comment on the costs and burdens of the proposals in the *Notice* that may impact small entity callers. We expect the information received in comments, including, where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities that may result if the proposals and associated requirements discussed in the *Notice* are ultimately adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its approach, which may include the following four alternatives, (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.”⁴⁷

16. In the *Notice*, the Commission seeks comment on several alternatives considered that may impact small entities. For example, we propose that callers disclose when a caller uses an AI-generated voice on a call but seek comment on whether certain usage or categories of calls that contain AI-generated voice messages should be excluded from this requirement. This would avoid placing certain compliance burdens on small entity callers to make such disclosures, and minimize some economic impact for these entities. We also seek comment on alternative definitions of AI in this context to ensure that the scope of calls that fall under that definition is consistent with the privacy protections afforded under the TCPA and whether it may inadvertently encumber technologies that do not fall within the TCPA. Next, we seek comment on whether there are ways in which the telecommunications industry might assist to ensure that calls made by individuals with disabilities under the proposed exemption do not run afoul of the condition that such calls not be charged to the called party. We seek comment on alternative ways to accomplish this objective including voluntary efforts by industry or equipment manufacturers.

17. The Commission expects to more fully consider the economic impact and alternatives for small entities following review of comments and costs and benefits analysis filed in response to the *Notice*. The Commission’s evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

18. None.

⁴⁷ 5 U.S.C. § 603(c)(1)–(4).

APPENDIX C

List of Commenters

<u>Commenter</u>	<u>Abbreviation</u>
CTIA	CTIA
Digimarc Corporation	Digimarc
Electronic Privacy Information Center	EPIC
First Orion Corporation	First Orion
INCOMPAS	INCOMPAS
Microsoft Corporation	Microsoft
Numeracle, Inc.	Numeracle
Felicity Pereyra	Pereyra
State Attorney Generals (joint filing of 26 AGs)	State AGs
Symphony42 Corporation (filed by Sean P. Fenton)	Symphony42
Transaction Network Service, Inc.	TNS*
Twilio, Inc.	Twilio
USTelecom – The Broadband Association	USTelecom
ZipDX LLC	ZipDX

* Filing both comment and reply comments. Bold – reply comment.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry (August 7, 2024)

Artificial Intelligence has become powerful enough to mimic human voices and create life-like images. Facing a rising tide of disinformation, roughly three-quarters of Americans say they are concerned about misleading AI-generated content. That is why the Federal Communications Commission has focused its work on AI by grounding it in a key principle of democracy—transparency.

Earlier this year, when a fraudulent campaign targeted voters in New Hampshire using AI-generated voice cloning to impersonate President Biden and tell them not to vote, we acted fast. We issued a Declaratory Ruling that made clear that “artificial or prerecorded voice” robocalls using AI voice cloning technology violate the Telephone Consumer Protection Act. In this effort we partnered with State Attorneys General, including the New Hampshire Attorney General, who is one of 49 State Attorneys General who have signed on to a Memorandum of Understanding to work with this agency on junk robocalls. This ruling matters. Because it gives our state colleagues the right to go after bad actors behind these calls and seek damages under the law. Then we worked with carriers to trace those responsible for this calling campaign. When we found the carrier behind it, we immediately sent a cease and desist letter and notified all other carriers to go ahead and stop carrying this traffic. We then took two enforcement actions. We proposed a \$6 million fine for the party responsible for the scam calls and a proposed a \$2 million fine for the carrier that put these junk calls on the line and apparently failed to follow the FCC’s call authentication rules.

Then last month, I wrote to the largest carriers and asked questions about what they were doing to keep AI-generated fake calls off our phone lines. They shared their plans to identify and block suspicious calls and the work they are doing to address the growing use of AI by scammers seeking to reach us on our phones. We have made their responses public on our website today.

These efforts—which are grounded in transparency—continued last week when the FCC took a major step to guard against AI being used by bad actors to spread chaos and confusion in our elections. We proposed that political advertisements that run on television and radio should simply disclose if AI is being used. I think if a campaign uses AI to create an ad, as the voter, viewer, and listener you have a right to know.

The concern about these technology developments is real. Rightfully so. But if we focus on transparency and taking swift action when we find fraud, I believe we can look beyond the risks of these technologies and harness the benefits.

Today we propose rules that would take another step towards transparency. We require callers and texters to make clear when they are using AI-generated technology. That means before any one of us gives our consent for calls from companies and campaigns they need to tell us if they are using this technology. It also means that callers using AI-generated voices need to disclose that at the start of a call.

This kind of transparency is important. It is also important to wrestle this technology for good. So today we also ask how people with speech or hearing disabilities might use AI-voice technologies. And we continue to ask questions about how we can harness the benefits of AI to detect scams on our networks before they ever reach us on our phones.

We have more work to do. But I am an optimist and I believe all of this is possible. I also believe this kind of transparency is what we need to build a digital future that works for everyone. So let’s get to it.

Thank you to the Robocall Response Team for their work. I also want to thank the staff responsible for this effort, including Mark Stone, Aaron Garza, Wesley Platt, Zac Champ, Richard Smith,

Noah Cherry, Kristi Thornton, Jerusha Burnett, Suzy Rosen Singleton, Michael Scott, Joshua Mendelsohn, and Diane Burstein from the Consumer and Governmental Affairs Bureau; Malena Barzilai, Erika Olsen, Richard Mallen, Elliot Tarloff, and Wade Lindsay from the Office of General Counsel; Andrew Wise, Susan Lee, Michelle Schaefer, Steven Rosenberg, and Dougals Galbi from the Office of Economics and Analytics; Caitlin Barbas, Daniel Stepanicich, and Kristi Thompson from the Enforcement Bureau; Jim Schlichting and Maureen Bizhko from the Public Safety and Homeland Security Bureau; Callie Coker, Jonathan Lechter, Kiara Ortiz, and Liz Drogula from the Wireline Competition Bureau; Edward Carlson from the Office of International Affairs; Lori Maarbjerg, Holly Saurer, Maria Mullarkey, Hillary DeNigro, and Zach Ross from the Media Bureau; Joycelyn James and Joy Ragsdale from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry (August 7, 2024)

AI is a very frothy hot topic in Washington and in headlines across the country these days. So, predictably, there has been sort of a lot of regulation that can follow after it. I believe we should proceed in a careful way in order to find the middle bowl of porridge. I don't believe in "no regulation" of AI but at the same time believe there is a risk of overdoing it early on. In the main, I believe a lot of the concerns I have with AI regulation are separate from this item. This item, for the most part, focuses in on this particular statute and implementing that statute.

When it comes to the broader regulation of AI, I think we need to have a couple of guardrails there. One, I don't think we should be regulating AI based purely on speculative harms that aren't showing up in the real world. Two, I think we need to be careful that we don't adopt AI-specific regulations when the concern isn't limited to things that appear in the AI space alone. Third, we need to make sure we continue to support US innovation and leadership. Those are my broader concerns that are, in the main, to the side of this particular item. Here, I did have some concerns, but they were able to be addressed through changes made along the way and I appreciate the Chairwoman and my colleagues working to address those. The item has my support.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry (August 7, 2024)

LinkedIn co-founder Reid Hoffman calls it a “steam engine of the mind.”¹ Jamie Dimon, Chairman and CEO of JPMorganChase, compares it to the printing press and the internet.² Computer scientist Andrew Ng has reached even bigger, calling it “the new electricity.”³ We may not fully know what AI is yet, but we do know: it’s momentous and it’s here to stay.

Clearly something this momentous is not the purview of one agency alone. I have long said that AI requires a whole-of-government approach, and the whole of government has been hard at work. The Biden-Harris Administration’s landmark Executive Order charged agencies and offices across the government with exploring the role AI plays within their area of expertise. Agencies from the Department of Homeland Security to the Small Business Administration have dug in, issuing reports, launching rulemaking proceedings, updating policies, seeking input, and funding projects.⁴

Here at the FCC, we issued the Notice of Inquiry (NOI) that commenced this docket in November 2023. In February 2024, we issued a Declaratory Ruling making clear that calls that use voice cloning technology are subject to the requirements of the Telephone Consumer Protection Act. In May 2024, we issued Notices of Apparent Liability against the orchestrator and one of the carriers of a voice cloning robocall scheme. And today, we propose that parties using AI-generated content in robocalls or robotexts both obtain consent for that use generally and disclose each use specifically. Critically, we propose protections to ensure that these new requirements do not limit the development of the positive uses of AI that help people with disabilities use our telephone network. And we seek further comment on the development of AI tools to detect and block spam calls and alert callers of potential fraud.

We are cognizant that we are not doing this work in a vacuum. In our November 2023 NOI, we sought comment on what other federal and state agencies were doing that may be relevant to our inquiry. Among others, the Federal Trade Commission filed comments in the docket.⁵ Our sister agency shared the results of its Voice Cloning Challenge – an open challenge to the public to develop products, policies, and procedures to protect consumers from AI-enabled voice cloning harms, like the ones we at the FCC have seen and acted upon. The four challenge winners demonstrate how academia and industry are working to develop tools to help protect consumers from voice cloning scams. Make no mistake – voice cloning gives fraudsters a potent weapon. But across government, from our consent and disclosure

¹ Washington Post Live, “Transcript: The Path Forward: Artificial Intelligence with Reid Hoffman,” The Washington Post (May 10, 2023), <https://www.washingtonpost.com/washington-post-live/2023/05/10/transcript-path-forward-artificial-intelligence-with-reid-hoffman/>

² Jamie Dimon, “Chairman and CEO Letter to Shareholders,” JPMorgan Chase (Apr. 8, 2024), <https://www.jpmorganchase.com/ir/annual-report/2023/ar-ceo-letters>

³ Andrew Ng, “Andrew Ng: How to Be an Innovator,” MIT Technology Review (Sept. 12, 2023), <https://www.technologyreview.com/2023/09/12/1078367/andrew-ng-innovator-ai/>

⁴ “FACT SHEET: Vice President Harris Announces OMB Policy to Advance Governance, Innovation, and Risk Management in Federal Agencies’ Use of Artificial Intelligence,” The White House (Mar. 28, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/28/fact-sheet-vice-president-harris-announces-omb-policy-to-advance-governance-innovation-and-risk-management-in-federal-agencies-use-of-artificial-intelligence/>

⁵ Comments of the Federal Trade Commission, CG Docket No. 23-362, filed July 29, 2024, <https://www.fcc.gov/ecfs/document/10729472814443/1>

proposals today to the FTC's funding of technology to mitigate the risk of voice cloning, we are working shoulder-to-shoulder to protect and empower the American people.

I want to thank the FCC staff who worked on this item. Each of you is member of the government-wide team working to understand and address the role of AI in our society. This item has my full support.

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON
APPROVING IN PART, CONCURRING IN PART**

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry (August 7, 2024)

I am willing to approve this item overall, and I thank the Chairwoman's office for working in good faith to include my suggested edits. However, I must only concur as to the portion of the Notice of Inquiry related to active monitoring of phone calls. The idea that the Commission would put its imprimatur on even the suggestion of ubiquitous third-party monitoring of telephone calls for the putative purpose of "safety" is beyond the pale.

**STATEMENT OF
COMMISSIONER ANNA GOMEZ**

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Proposed Rulemaking and Notice of Inquiry (August 7, 2024)

Robocalls and robotexts are the number one complaint that consumers raise to the FCC. We agree, they are incredibly frustrating. That is why we continuously work to combat robocalls and robotexts. Whether improving our existing databases or exploring the role of Artificial Intelligence (AI), dedicated staff at the FCC works hard to mitigate unwanted robocalls and robotexts with every tool at our disposal and continuously looks for new ways to end this menace to consumers.

Today, we took an important action in this line of work. We voted on proposals to ensure that AI is harnessed to protect consumers from harm rather than amplify the risks they experience in the robocall and robotext context. AI technologies can bring both new challenges and opportunities to combat this scourge, and responsible and ethical implementation of AI technologies is crucial to strike a balance.

I am glad that we are seeking comment on ways that consumers can become aware of when they are receiving communications generated with AI. We serve consumers best when we arm them with information. I look forward to hearing from leaders in technology, consumers, and industry as we develop a record in this proceeding.

I commend the staff of the Consumer and Governmental Affairs Bureau, the Wireline Competition Bureau, and all staff at the Agency for your hard work to protect consumers.

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

In the Matter of	)	
	)	
Improving the Effectiveness of the Robocall Mitigation Database	)	WC Docket No. 24-213
	)	
Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System	)	MD Docket No. 10-234
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 7, 2024

Released: August 8, 2024

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 60 days after publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a statement.

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I. INTRODUCTION

1. Illegal robocalls cause billions of dollars in consumer fraud, not to mention the losses suffered by consumers due to lost time and attention, and diminished confidence in the nation's telephone network.¹ Protecting Americans from illegal robocalls remains the Commission's top consumer

¹ *Call Authentication Trust Anchor*, WC Docket No. 17-97, *Sixth Report and Order and Further Notice of Proposed Rulemaking*, 38 FCC Rcd 2573, 2574, para. 1 (2023) (*Sixth Caller ID Authentication Report and Order* or *Sixth Caller ID Authentication Further Notice*). In 2023, the Commission received approximately 96,500 complaints concerning unwanted calls, including illegal robocalls—more than any other issue. See FCC, Consumer Complaint Data Center, <https://www.fcc.gov/consumer-help-center-data> (last visited July 11, 2024).

protection priority. Today we launch a proceeding to explore new initiatives intended to increase consumer protection, reduce unwanted calls, and increase accountability of non-compliant providers.

2. This initiative follows a series of Commission actions on multiple fronts to stem the tide of robocalls using every tool at our disposal.² One such tool is the Robocall Mitigation Database (RMD or Database),³ a public database established by the Commission in 2021 to facilitate the implementation of our STIR/SHAKEN and robocall mitigation rules.⁴ Consistent with the Commission's efforts to expand both STIR/SHAKEN implementation and robocall mitigation requirements in recent years,⁵ all providers are now required to file certifications and robocall mitigation plans in the Robocall Mitigation Database, as well as additional information to assist the Commission with evaluating compliance with our rules.⁶ This makes the Robocall Mitigation Database an essential consumer protection tool that is not only relied upon by the Commission for our own enforcement activities,⁷ but by other federal and state

² See FCC, *Robocall Response Team: Combating Scam Robocalls & Robotexts*, <https://www.fcc.gov/spoofed-robocalls> (last visited July 11, 2024) (listing recent robocall-related policy and enforcement actions by the Commission).

³ FCC, *Robocall Mitigation Database*, <https://www.fcc.gov/robocall-mitigation-database> (last visited July 11, 2024); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1902-07, paras. 82-94 (2020) (*Second Caller ID Authentication Report and Order*).

⁴ See *Wireline Competition Bureau Announces Opening of Robocall Mitigation Database and Provides Filing Instructions and Deadlines*, WC Docket No. 17-97, Public Notice, 36 FCC Rcd 7394 (WCB 2021) (*2021 Robocall Mitigation Database Public Notice*).

⁵ See *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2850-61, paras. 15-52 (expanding STIR/SHAKEN authentication obligations to the "first" intermediate provider in a call chain, requiring all intermediate and voice service providers to take reasonable steps to mitigate illegal robocalls and submit a certification and robocall mitigation plan to the Robocall Mitigation Database, expanding the information all filers must file in the Robocall Mitigation Database, and requiring all downstream providers to block calls sent directly from intermediate providers not in the Robocall Mitigation Database); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Call Authentication Trust Anchor, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order, Fifth Report and Order, Order on Reconsideration, Order, Seventh Further Notice of Proposed Rulemaking, Fifth Further Notice of Proposed Rulemaking, 37 FCC Rcd 6865, 6880-94, 6907-10, 6916-19, paras. 34-63, 102-08, 128-35 (2022) (*Gateway Provider Order* or *Fifth Caller ID Authentication Further Notice*) (expanding the STIR/SHAKEN authentication obligation to gateway providers, requiring such providers to take reasonable steps to mitigate illegal robocalls and submit a certification and mitigation plan to the Robocall Mitigation Database, and requiring domestic providers to block calls sent directly from foreign voice providers not listed in the Robocall Mitigation Database).

⁶ See 47 CFR § 64.6305(d)-(f). The information that providers are required to submit to the Robocall Mitigation Database is detailed in Section II, below.

⁷ See, e.g., *Global UC Inc*, Removal Order, 37 FCC Rcd 13376 (EB 2022) (removing a provider's certification because it included a facially deficient robocall mitigation plan); *TELECLUB fka 2054235 Alberta Ltd.*, Removal Order, DA 24-153 (EB Feb. 22, 2024) (same); *Viettel Business Solutions Company et al.*, Removal Order, DA 24-152 (EB Feb. 22, 2024) (removing 12 providers from the Robocall Mitigation Database because their certifications included facially deficient robocall mitigation plans); *BPO Innovate*, Order, DA 24-283 (EB Mar. 27, 2024) (removing a provider's certification because of two deficiencies, including a facially deficient robocall mitigation plan) (collectively, *Removal Orders*). In each case, the Enforcement Bureau found a violation of the Commission's rules based upon the information contained in the certification and robocall mitigation plan, and relied upon the contact information provided in the submission to send out a notice that the provider's certification is deficient, an order directing the provider to explain why its certification should not be removed, and then an order removing the provider's certification from the Database. Removing a provider's certification from the Robocall Mitigation Database serves as an effective enforcement mechanism because removal obligates all other providers to cease accepting traffic from the provider that no longer has a certification in the Database. See 47 CFR § 64.6305(g).

enforcement bodies,⁸ and by downstream providers, which are prohibited from accepting a provider's traffic if it is not listed in the Robocall Mitigation Database.⁹ It is, therefore, critical that the information submitted to the Robocall Mitigation Database by providers be complete, accurate, and up-to-date.

3. Given the importance of the Robocall Mitigation Database, we launch this proceeding to examine ways to ensure and improve the overall quality of submissions based on the collective experience of all stakeholders over the last three years. Specifically, we propose and seek comment on procedural measures that the Commission could adopt to promote the highest level of diligence when providers submit required information to the Robocall Mitigation Database,¹⁰ and technical solutions that the Commission could use to identify data discrepancies in filings—and require them to be corrected—before they are accepted by the system. We propose and seek comment on measures to increase accountability for providers that submit inaccurate and false information to the Robocall Mitigation Database or fail to update their filings when the information they contain changes, as required by the Commission's rules.¹¹ Lastly, we generally invite comment on any other procedural steps the Commission could require to increase the effectiveness of the Robocall Mitigation Database as a compliance and consumer protection tool.

II. BACKGROUND

4. The Commission created the Robocall Mitigation Database in 2021 to effectuate provisions of the TRACED Act,¹² which directed the Commission to require voice service providers to implement the STIR/SHAKEN caller ID authentication framework on their IP-based voice networks by June 30, 2021, subject to certain extensions due to undue hardship or reliance on non-IP infrastructure.¹³

⁸ The Commission has signed Memoranda of Understanding with Attorneys General in 49 states as well as the District of Columbia and Guam. FCC, FCC-State Robocall Investigation Partnerships, <https://www.fcc.gov/fcc-state-robocall-investigation-partnerships> (last visited July 11, 2024).

⁹ Voice service providers, including terminating providers, and intermediate providers must refuse traffic sent directly from any provider that does not appear in the Robocall Mitigation Database. See 47 CFR § 64.6305(g)(1)-(4).

¹⁰ At this time, we are not proposing or seeking comment on additional content requirements for Robocall Mitigation Database filings. The Commission adopted significant additional content requirements in March 2023 and required all providers to submit Robocall Mitigation Database filings that complied with those additional requirements by February 26, 2024. See *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2593-99, paras. 40-49 (adopting additional Robocall Mitigation Database filing content requirements and setting the submission deadline for new and updated filings as the later of 30 days following Office of Management and Budget approval of the relevant information collection requirements or a deadline set by the Wireline Competition Bureau through Public Notice); *Wireline Competition Bureau Announces Robocall Mitigation Database Filing Deadlines and Instructions and Additional Compliance Dates*, WC Docket No. 17-97, Public Notice, DA 24-73, at 2 (WCB Jan. 25, 2024) (setting February 26, 2024 Robocall Mitigation Database submission deadline for new and updated filings) (2024 Robocall Mitigation Database Public Notice). Those filings are currently under review.

¹¹ See 47 CFR § 64.6305(d)-(f).

¹² See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902, para. 82; *2021 Robocall Mitigation Database Public Notice*, 36 FCC Rcd at 7394.

¹³ The TRACED Act included two provisions for extension of the June 30, 2021 implementation deadline. Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(5)(A)(ii) (2019) (TRACED Act). First, it permitted the Commission to extend the compliance date for a reasonable period of time “upon a public finding of undue hardship,” and second, it directed the Commission to grant an extension to those providers that “materially rel[y]” on non-IP infrastructure. *Id.*; see also *Second Caller ID Authentication Report and Order*, 36 FCC Rcd 1876. Pursuant to these provisions, in 2020 the Commission granted three categorical STIR/SHAKEN implementation extensions on the basis of undue hardship to: (1) small voice service providers with 100,000 or fewer voice subscriber lines; (2) voice service providers unable to obtain the SPC “token” necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214 discontinuance. See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-83, paras. 39-51; 47 CFR § 64.6304(a)(1)

(continued....)

Under the framework established by the TRACED Act, any voice service provider that is granted a STIR/SHAKEN implementation extension pursuant to these provisions must implement “an appropriate robocall mitigation program to prevent unlawful robocalls from originating on the network of the provider.”¹⁴ To promote transparency, effective mitigation practices, and diligent enforcement of the Commission’s rules, the Commission required voice service providers to submit certifications to the Robocall Mitigation Database concerning their STIR/SHAKEN implementation progress, and if they had not fully implemented STIR/SHAKEN, a description of their robocall mitigation program, including “[t]he specific reasonable steps the voice service provider has taken to avoid originating illegal robocall traffic.”¹⁵ Providers filing in the Robocall Mitigation Database were also required to submit additional information, including business names and addresses, and a point of contact for resolving robocall-mitigation related issues.¹⁶ The Commission made the certification data and robocall mitigation plans filed in the Robocall Mitigation Database publicly available on the Commission’s website to facilitate inter-provider cooperation and the public’s ability to understand providers’ robocall mitigation practices.¹⁷

5. Since 2021, the Commission has worked to expand the scope of providers required to implement STIR/SHAKEN and comply with robocall mitigation requirements, and thus, the providers required to submit certifications and robocall mitigation plans in the Robocall Mitigation Database.¹⁸ Today, all providers carrying or processing voice traffic—voice service providers,¹⁹ gateway providers,²⁰

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(providing an extension of the implementation deadline for small voice service providers); *id.* § 64.6304(a)(1)(i) (limiting the extension for non-facilities-based small voice service providers to June 30, 2022). Further, the Commission granted voice service providers a continuing extension for the portions of their networks that rely on technology that cannot initiate, maintain, or terminate SIP calls. *See* TRACED Act § 4(b)(5)(B); 47 CFR § 64.6304(d); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1892-96, paras. 66-70. The implementation extensions for services scheduled for section 214 discontinuance ended on June 30, 2022, and the implementation extensions for non-facilities-based and facilities-based small voice service providers ended on June 30, 2022, and June 30, 2023, respectively. In 2023, the Commission granted an indefinite extension of time for small voice providers that are satellite providers originating calls using NANP numbers on the basis of the TRACED Act’s undue hardship standard. *See Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2614, para. 79.

¹⁴ TRACED Act § 4(b)(5)(C)(i).

¹⁵ *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1897-1905, paras. 74-89; 47 CFR § 64.6305(d)(1)-(2).

¹⁶ *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 84.

¹⁷ *See id.* at 1902-03, paras. 82-85. Providers that must include confidential information to accurately and fully comply with the Commission’s Robocall Mitigation Database filing requirements may seek confidential treatment of that information pursuant to section 0.459 of the Commission’s rules. *See* 47 CFR § 0.459; *Wireline Competition Bureau Adopts Protective Order for Robocall Mitigation Program Descriptions*, WC Docket No. 17-97, Public Notice, Attach. (Protective Order), 36 FCC Rcd 14562, 14566, para. 2 (WCB 2021) (*Protective Order*).

¹⁸ *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902, para. 82 (requiring voice service providers to file, and those that did not fully implement STIR/SHAKEN to submit a robocall mitigation plan); *Gateway Provider Order* 37 FCC Rcd at 6880, para. 34 (requiring gateway providers to file and submit a robocall mitigation plan); *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2588, para. 28 (requiring all voice service providers and intermediate providers to file and submit a robocall mitigation plan).

¹⁹ The TRACED Act and our rules define voice service as “any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan” or any successor to that plan the Commission adopts and includes “transmissions from a telephone facsimile machine, computer or other device to a telephone facsimile machine,” and without limitation, “any service that enables real-time, two-way voice communications, including any service that requires internet protocol-compatible customer premises equipment . . . and permits out-bound calling, whether or not the service is one-way or two-way” VoIP. TRACED Act § 4(a)(2); 47 CFR § 64.6300(o). An entity that provides voice service is a voice service provider.

and non-gateway intermediate providers²¹—are required to file certifications and robocall mitigation plans in the Robocall Mitigation Database.²² The consequences for not doing so, or for filing certifications and robocall mitigation plans that do not comply with the Commission’s rules, are severe. They may include the imposition of a Commission forfeiture and/or the removal of a deficient filing from the Database.²³ The latter remedy effectively precludes the provider from operating as a provider of voice services in the United States, as the Commission’s rules prohibit intermediate and terminating providers from accepting traffic directly from any provider that does not appear in the Database.²⁴ This prohibition, which denies “a service provider access to the regulated U.S. voice network if [the Commission] determines that the service provider’s . . . robocall mitigation practices are inadequate,”²⁵ recognizes the importance of the information submitted to the Robocall Mitigation Database and its role as a tool for enforcement and industry self-regulation.

A. Content Requirements for Robocall Mitigation Database Submissions

6. To start a filing in the Robocall Mitigation Database, providers must first obtain a business-type FCC Registration Number (FRN) via the FCC’s Commission Registration System (CORES)²⁶ and an FCC username and password.²⁷ An FRN is a unique 10-digit number assigned to a

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²⁰ See 47 CFR § 64.6300(d) (defining “gateway provider” as “a U.S.-based intermediate provider that receives a call directly from a foreign originating provider or foreign intermediate provider at its U.S.-based facilities before transmitting the call downstream to another U.S.-based provider” and further defining for the purpose of the rule “U.S.-based” and “receives a call directly”).

²¹ See *id.* § 64.6300(i) (defining “non-gateway intermediate provider” as “any entity that is an intermediate provider as that term is defined by paragraph (g) of this section that is not a gateway provider as that term is defined by paragraph (d) of this section”); see also *id.* § 64.6300(g) (defining “intermediate provider” as “any entity that carries or processes traffic that traverses or will traverse the public switched telephone network at any point insofar as that entity neither originates nor terminates that traffic”).

²² See 47 CFR § 64.6305(d) (requiring voice service providers to submit a certification and robocall mitigation plan in the Robocall Mitigation Database); *id.* § 64.6305(e) (requiring gateway providers to do the same); *id.* § 64.6305(f) (requiring non-gateway intermediate providers to do the same).

²³ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 83; *Gateway Provider Order* 37 FCC Rcd at 6882, para. 40; *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2603, para. 57.

²⁴ 47 CFR § 64.6305(g)(1) (requiring intermediate providers and voice service providers to accept traffic sent directly from a domestic voice service provider only if that provider’s filing appears in the Robocall Mitigation Database and has not been delisted); *id.* § 64.6305(g)(2) (requiring intermediate provider and voice service providers to accept traffic sent directly from a foreign voice service provider or foreign intermediate provider that uses North American Numbering Plan resources that pertain to the United States in the caller ID field to send voice traffic to residential or business subscribers in the United States only if that foreign provider’s filing appears in the Robocall Mitigation Database and has not been delisted); *id.* § 64.6305(g)(3) (requiring intermediate providers and voice service providers to accept traffic sent directly from a gateway provider only if that provider’s filing appears in the Robocall Mitigation Database and has not been delisted); *id.* § 64.6305(g)(4) (requiring intermediate providers and voice service providers to accept traffic sent directly from a non-gateway intermediate provider only if that provider’s filing appears in the Robocall Mitigation Database and has not been delisted).

²⁵ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1904, para. 87.

²⁶ CORES is the system the FCC uses to facilitate the assignment of FRNs to all persons and entities seeking to do business with the Commission. 47 CFR § 1.8002(a); *Amendments of Parts 1, 21, 61, 73, 74 and 76 of Commission’s Rules, Adoption of Mandatory FCC Registration Number*, MD Docket No. 00-205, Report and Order, 16 FCC Rcd 16138 (2001); see also *Amendment of Part 1 of the Commission’s Rules, Concerning Practice and Procedure, Amendment of CORES Registration System*, MD Docket No. 10-234, Notice of Proposed Rulemaking, 25 FCC Rcd 17407, 17408-11, paras. 5-10 (2010) (explaining how CORES facilitates the Commission’s compliance with a variety of federal statutes and guidance, including but not limited to, the Debt Collection Improvement Act of 1996). Through CORES, users may register and manage an FRN; view financial standing (RED or Green Light Status) with the FCC and make payments; pay application and regulatory fees; and manage Incentive Auction

(continued....)

business or individual registering with the Commission that is used to identify the registrant's business dealings with the agency.²⁸ Providers establish a CORES account and FRN to submit a new filing or manage existing filings in the Robocall Mitigation Database.²⁹ Once a provider's FRN is selected in the Database, the entity name and business address associated with that FRN are automatically populated in the Robocall Mitigation Database certification form. These fields of the certification form are "read only" and may not be changed without changing the associated data in CORES.³⁰

7. To complete the remainder of the Robocall Mitigation Database certification form, providers must manually enter additional information,³¹ including:

- Whether the provider has fully, partially, or not implemented the STIR/SHAKEN authentication framework in the IP portions of its network;
- Confirmation that all of the calls that it originates on its network are subject to a robocall mitigation program consistent with section 64.6305(a), (b), and/or (c);
- Confirmation that any prior Robocall Mitigation Database submission has not been removed by Commission action and that the provider has not been prohibited from filing in the Robocall Mitigation Database by the Commission;
- Any other business name(s) currently in use by the provider;
- All business names previously used by the provider;
- Whether the provider is a foreign voice service provider;³²
- The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues;³³
- The provider's role(s) in the call path;³⁴

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financials, among other functions. FCC, Commission Registration System (CORES), <https://apps.fcc.gov/cores/userLogin.do> (last visited July 11, 2024). Commission rules require that the information used to obtain an FRN be kept current. 47 CFR § 1.8002(b)(2); *Amendment of Part 1 of the Commission's Rules, Concern Practice and Procedure, Amend of CORES Registration System*, MD Docket No. 10-234, Report and Order, 36 FCC Rcd 10773, 10775, para. 6 (2021).

²⁷ FCC, *Robocall Mitigation Database Filing Instructions* at 5, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf> (last visited July 11, 2024).

²⁸ 47 CFR § 1.8001; FCC, *FCC Registration Frequently Asked Questions*, <https://apps.fcc.gov/cores/publicHome.do?faq=true&csfrToken=> (last visited July 11, 2024).

²⁹ FCC, *Robocall Mitigation Database Filing Instructions* at 6, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

³⁰ *Id.* at 7, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

³¹ *See id.* at 8-14, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

³² *See* 47 CFR § 64.6300(c) (defining "foreign voice service provider" as "any entity providing voice service outside the United States that has the ability to originate voice service that terminates in a point outside that foreign country or terminate voice service that originates from points outside that foreign country").

³³ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2596-97, para. 42.

³⁴ *See id.* at 2596, para. 44 ("Specifically, providers must indicate whether they are: (1) a voice service provider with a STIR/SHAKEN implementation obligation serving end-users; (2) a voice service provider with a STIR/SHAKEN obligation acting as a wholesale provider originating calls; (3) a voice service provider without a STIR/SHAKEN obligation; (4) a non-gateway intermediate provider with a STIR/SHAKEN obligation; (5) a non-gateway intermediate provider without a STIR/SHAKEN obligation; (6) a gateway provider with a STIR/SHAKEN

(continued....)

- Whether the provider is eligible for any STIR/SHAKEN implementation extensions or exemptions;³⁵
- Information regarding the provider’s principals, affiliates, subsidiaries, and parent companies;³⁶
- Information on any recent enforcement actions concerning illegal robocalls;³⁷ and
- The provider’s Operating Company Number (OCN), if it has one.³⁸

8. Once the certification is complete, providers must then upload a PDF file containing the written description of their robocall mitigation programs.³⁹ Under the Commission’s rules, all providers are required to develop robocall mitigation programs that include reasonable steps to avoid transmitting illegal robocall traffic, and include commitments to respond within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate calls.⁴⁰ The Commission’s “reasonable steps” standard requires that a robocall mitigation program “‘include[] detailed practices that can reasonably be expected to significantly reduce’ the carrying or processing (for intermediate providers) or origination (for voice service providers) of illegal robocalls.”⁴¹

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obligation; (7) a gateway provider without a STIR/SHAKEN obligation; and/or (8) a foreign provider.”) (citations omitted).

³⁵ See *id.* at 2596-97, para. 45 (“Specifically, a filer asserting it does not have an obligation to implement STIR/SHAKEN because of an ongoing extension, or because it lacks the facilities necessary to implement STIR/SHAKEN, must both explicitly state the rule that exempts it from compliance and explain in detail why that exemption applies to the filer.”) (citations omitted).

³⁶ *Id.* at 2597, para. 46. Filers must provide sufficient detail regarding their ownership and management to facilitate the Commission’s ability to determine whether the provider has been prohibited from filing in the Robocall Mitigation Database. *Id.*

³⁷ See *id.* at 2597-98, paras. 46-47 (requiring providers to “certify that they have not been prohibited from filing in the Robocall Mitigation Database pursuant to a law enforcement action” and to provide information on whether it has “been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing” concerning illegal robocalling, along with a description of any such action or investigation).

³⁸ See *id.* at 2599, para. 48.

³⁹ FCC, *Robocall Mitigation Database Filing Instructions* at 20, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>. Providers that wish to designate a portion of their robocall mitigation program filing as confidential may upload both confidential (i.e., unredacted) and non-confidential (i.e., redacted) documents pursuant to the terms of the Protective Order adopted for Robocall Mitigation Database filings. See *Protective Order*, 36 FCC Rcd at 14566, para. 2 (defining confidential information filed as part of a robocall mitigation plan as information filed consistent with the Protective Order or sections 0.459 or 0.461 of the Commission’s rules).

⁴⁰ 47 CFR § 64.6305(a)(2), (b)(2), (c)(2); see also *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2580, para. 14 (“We require *all* providers to take reasonable steps to mitigate illegal robocalls and file mitigation plans in the Robocall Mitigation Database—regardless of their STIR/SHAKEN implementation status or whether they have the facilities necessary to implement STIR/SHAKEN.”) (emphasis in original).

⁴¹ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2590, para. 31. Certain additional requirements apply based on the role the provider plays in the call path. For instance, voice service providers must describe how they are meeting their existing obligation to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls, see 47 CFR § 64.6305(d)(2)(ii), and gateway providers and non-gateway intermediate providers must describe their ‘know-your-upstream provider’ procedures designed to mitigate illegal robocalls. *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2594, para. 40 (citations omitted); see also 47 CFR § 64.6305(d)(2)(ii), (e)(2)(ii), (f)(2)(ii). In addition, all providers must describe any call analytics

(continued....)

9. The Commission has not otherwise mandated that providers include specific measures in their mitigation plans,⁴² finding that providers require “flexibility in determining which measures to use to mitigate illegal calls on their networks.”⁴³ At the same time, the Commission directed that providers must comply with the practices specified in their robocall mitigation plans and that their robocall mitigation programs will be deemed deficient if the provider knowingly or through negligence carries or processes calls (for intermediate providers) or originates (for voice service providers) unlawful robocall campaigns.⁴⁴ Further, a robocall mitigation plan will be deemed facially deficient if it does not provide any information about the specific reasonable steps that the provider is taking to mitigate illegal robocalls.⁴⁵ Providers that submit deficient robocall mitigation plans to the Robocall Mitigation Database and fail to cure those deficiencies are referred to the Commission’s Enforcement Bureau for investigation and potential removal from the Database,⁴⁶ after which all downstream providers will be prohibited from carrying their traffic.⁴⁷

B. When and How Robocall Mitigation Database Submissions are Filed

10. Providers are required to submit Robocall Mitigation Database certifications and robocall mitigation plans pursuant to deadlines set and announced by the Commission.⁴⁸ Providers are also required to update their submissions within 10 business days of any changes to required content.⁴⁹ For instance, if the contact information provided for the individual within the company responsible for robocall mitigation efforts has changed since the provider submitted its certification and robocall mitigation plan to the Robocall Mitigation Database, the provider is required to update its submission to include the current contact information within 10 business days of that change.

(Continued from previous page)

systems they use to identify and block illegal traffic, including whether they use a third-party vendor or vendors and the name of the vendor(s). 47 CFR § 64.6305(d)(2)(ii), (e)(2)(ii), (f)(2)(ii).

⁴² See *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2590, para. 31.

⁴³ *Id.* at 2590, para. 31 n.118 (internal quotations omitted); see also *id.* n.117 (noting that “what constitutes a ‘reasonable step’ may depend upon the specific circumstances and the provider’s role in the call path”); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1899, para. 76 (finding that such an approach “gives voice service providers ‘the flexibility to react to traffic trends they view on their own networks and react accordingly’”).

⁴⁴ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2590, para. 31; *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900-02, paras. 78-81.

⁴⁵ See *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2604, para. 61. For example, robocall mitigation plans that only include a generalized statement that a robocall mitigation plan is in place or merely recite the Commission’s rules for robocall mitigation will be deemed facially deficient. *Id.* at 2404-05, paras. 61-62.

⁴⁶ See *infra* Section III.B.2.

⁴⁷ See 47 CFR § 64.6305(g)(1)-(4).

⁴⁸ Most recently, all existing filers were required to file updated certifications and robocall mitigation plans in the Robocall Mitigation Database by February 26, 2024, to comply with new content requirements adopted by the Commission in the *Sixth Caller ID Authentication Report and Order*. See *2024 Robocall Mitigation Database Public Notice*, at 1-2. The *Sixth Caller ID Authentication Report and Order* also expanded the scope of providers subject to the Commission’s caller ID authentication and robocall mitigation rules. *Id.* at 1-2 & n.2. Those providers were also required to file certifications and robocall mitigation plans in the Robocall Mitigation Database by February 26, 2024. *Id.* at 1-2.

⁴⁹ See 47 CFR § 64.6305(d)(5), (e)(5), (f)(5); *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2595-96, para. 42.

11. All Robocall Mitigation Database submissions are filed via a portal accessible on the Commission's website at <https://www.fcc.gov/robocall-mitigation-database>.⁵⁰ After entering all of the required content, the provider's submission must be electronically signed by an officer of the company who certifies, under penalty of perjury, that the information included in the submission is true and correct.⁵¹ The submission is then accepted by the system. Instructions to assist filers with completing their Robocall Mitigation Database submissions are available on the Commission's website,⁵² as well as other reference documents providing guidance to providers on what is required to comply with the Commission's rules.⁵³ Any provider or member of the public may view submissions to the Robocall Mitigation Database via the Commission's website or download a list of them as a .CSV file.⁵⁴

III. DISCUSSION

12. The Robocall Mitigation Database is a critical tool in the Commission's efforts to ensure compliance with its STIR/SHAKEN and robocall mitigation rules and protect the public from the harms caused by illegal robocalling campaigns. Many stakeholders outside of the Commission also depend on the information in the Robocall Mitigation Database to make important decisions that directly impact consumers. Downstream providers use the information in the Database to determine whether they are permitted to carry traffic on their networks, and other consumer protection and enforcement bodies use the information to pursue their own investigations into suspected illegal robocalling activities under applicable laws. Information submitted to the Robocall Mitigation Database by providers must be accurate and complete, and the Commission's requirements for filing in the Database and related accountability measures must promote accuracy, thoroughness, and continued diligence.

13. A review of filings in the Robocall Mitigation Database indicates that, among some providers, diligence is lacking. We have identified deficiencies ranging from failures to provide accurate contact information to failing to submit robocall mitigation plans that in any way describe reasonable robocall mitigation practices.⁵⁵ While the Commission has acted to support the integrity of Robocall Mitigation Database information by removing deficient filings through enforcement actions⁵⁶ and remains committed to doing so, there may be ways that the Commission could incentivize providers to avoid submitting deficient filings to the Database in the first instance through additional procedural steps,

⁵⁰ The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to establish the form and format of submissions to the Robocall Mitigation Database. See *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2600-01, para. 52. The Bureau provides detailed filing instructions on the Robocall Mitigation Database landing page at https://fccprod.service.nowservices.com/rmd?id=rmd_welcome.

⁵¹ See 47 CFR § 64.6305(d)(3), (e)(3), (f)(3); FCC, *Robocall Mitigation Database Filing Instructions* at 21, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

⁵² FCC, *Robocall Mitigation Database Filing Instructions*, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

⁵³ See, e.g., *2021 Robocall Mitigation Database Public Notice*, 36 FCC Rcd 7394; *Wireline Competition Bureau Announces Deadlines for Gateway Provider Robocall Mitigation Requirements and Additional Compliance Dates and Filing Instructions*, WC Docket No. 17-97, Public Notice, 37 FCC Rcd 14586 (WCB 2022) (*2022 Robocall Mitigation Database Public Notice*); *2024 Robocall Mitigation Database Public Notice*, DA 24-73; *Wireline Competition Bureau Issues Caller ID Authentication Best Practices*, WC Docket Nos. 17-97 and 20-324, Public Notice, 35 FCC Rcd 14726 (WCB 2020); FCC, *Robocall Mitigation Database*, <https://www.fcc.gov/robocall-mitigation-database>.

⁵⁴ While all information in Robocall Mitigation Database certifications is required to remain public, providers may request confidential treatment of information provided in their robocall mitigation plans consistent with sections 0.459 or 0.461 of the Commission's rules, 47 CFR §§ 0.459, 0.461, and the Protective Order adopted for Robocall Mitigation Database filings. See *Protective Order*, 36 FCC Rcd at 14566, para. 2.

⁵⁵ See *Removal Orders*.

⁵⁶ See *id.*

accountability measures, and technical validation solutions. In addition to improving the overall quality of submissions to the Robocall Mitigation Database, such measures may also deter bad actors that wish to evade our rules by deliberately submitting false or misleading information to the Database in an effort to ensure the traffic they send is carried by downstream providers.

14. We initiate this proceeding to propose and seek comment on additional procedural and accountability measures for the Robocall Mitigation Database to make it as effective as possible for the providers and government entities that use it, and thus the consumers it was instituted to protect. Specifically, we:

- Propose to amend the Commission’s rules to require providers to update information they have submitted to CORES within 10 business days of any changes to ensure that the business name and address information automatically populated into Robocall Mitigation Database submissions from that system is current;
- Propose to require multi-factor authentication each time a provider accesses the Robocall Mitigation Database;
- Seek comment on requiring providers to obtain a unique Personal Identification Number (PIN) that must be provided before the Robocall Mitigation Database will accept a submission;
- Seek comment on requiring providers to remit a filing fee for submissions to the Robocall Mitigation Database;
- Seek comment on technical solutions that will scan Robocall Mitigation Database submissions, flag data discrepancies, and require providers to resolve such discrepancies before the submission is accepted by the filing system;
- Propose base and maximum forfeiture amounts for submitting inaccurate or false information to the Robocall Mitigation Database, or failing to update information that has changed within 10 business days, as required by the Commission’s rules;
- Propose to authorize downstream providers to permissively block traffic from Robocall Mitigation Database filers that have been given notice of facial deficiencies in their robocall mitigation plans and failed to correct those deficiencies within 48 hours; and
- Seek comment on additional procedural steps the Commission could require to encourage providers to submit accurate and complete information to the Robocall Mitigation Database and CORES and keep that information current.

We estimate that the gains—including reduced fraud, avoided aggravation, and enhanced consumer confidence—should far exceed any added compliance burdens. We seek comment on the costs and benefits of our proposals outlined below.

A. Measures to Improve the Quality of Robocall Mitigation Database Submissions

15. In this section, we seek comment on procedural and technical measures to improve the overall quality of Robocall Mitigation Database submissions in order to make the Database more effective for all stakeholders who use it. First, we seek comment on any additional steps filers should be required to affirmatively take to ensure the accuracy of information submitted to the Robocall Mitigation Database, and to ensure that such information remains accurate and up-to-date over time. Second, we seek comment on any technical solutions that the Commission could deploy to validate data in submissions and flag discrepancies before they are accepted by the Robocall Mitigation Database.

1. Procedural Steps to Improve the Accuracy of Robocall Mitigation Database Filings

16. We seek comment on whether the Commission should adopt additional procedural steps for Robocall Mitigation Database filings to improve and ensure the accuracy of information contained in the Robocall Mitigation Database. We believe that there is ample information in the Commission's rules, orders, public notices, filing instructions, and other materials to advise providers on *what* they must file in the Robocall Mitigation Database to comply with our rules.⁵⁷ We now turn to explore ways to improve diligent adherence to those requirements by filers. We, therefore, seek comment on measures that will prompt providers to affirmatively verify that the information they submit is responsive to the Commission's legal requirements and factually accurate, and to incentivize compliance with the on-going requirement to keep information in the Robocall Mitigation Database current. In addition to the specific measures discussed below, we invite general comment on procedures that we could adopt that would achieve these goals.

17. *Requiring Filers to Update Information in CORES.* We first propose adopting a rule to require providers to update any information submitted to CORES within 10 business days of any changes to that information. As noted above, a CORES account and FRN are required to file in the database. A user's FRN is uniquely associated with each Robocall Mitigation Database filing, and the entity name and address associated with this FRN in CORES are imported directly into the Database along with a user's FRN.⁵⁸ Currently, section 1.8002 of the Commission's rules, which governs obtaining an FRN, requires that information submitted by registrants, including the entity's name and address, "be kept current."⁵⁹ It does not, however, establish a deadline for submitting updates after a change in information occurs. Thus, information in CORES may be out of date at the time a provider submits a certification and robocall mitigation plan to the Robocall Mitigation Database, resulting in inaccurate information being imported into the Database.

18. We therefore propose to require all entities and individuals that register in CORES to update any information required by the system within 10 business days of any changes, as is currently required for filings in the Robocall Mitigation Database.⁶⁰ We seek comment on the benefits and burdens of this proposal. We believe a requirement to update contact information promptly would not impose any significant costs on CORES users, which are already obligated to keep their information current under section 1.8002, and that any incidental burdens are easily outweighed by the significant interests of the Commission and other stakeholders in obtaining accurate identifying information from the Commission's databases. This is particularly true given that other Commission databases beyond the Robocall

⁵⁷ See, e.g., 47 CFR 63.6405(d)-(f); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1897-1903, paras. 74-85; *Gateway Provider Order*, 37 FCC Rcd at 6880-86, paras. 34-50; *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2588-2601, paras. 28-52; *2021 Robocall Mitigation Database Public Notice*, 36 FCC Rcd 7394; *2022 Robocall Mitigation Database Public Notice*, 37 FCC Rcd 14586; *2024 Robocall Mitigation Database Public Notice*, DA 24-73; FCC, *Robocall Mitigation Database Filing Instructions*, <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>.

⁵⁸ This contact information, along with a taxpayer identification number (TIN), such as a Social Security Number (SSN) for individuals, or an Employer Identification Number (EIN) for businesses is entered by users when they create a CORES account and complete an FRN registration form. FCC, *Commission Registration System (CORES), Frequently Asked Questions*, <https://apps.fcc.gov/core/userLogin.do>.

⁵⁹ 47 CFR § 1.8002(b)(2).

⁶⁰ 47 CFR § 64.6305(d)(5), (e)(5), (f)(5); see also 47 CFR § 52.15(g)(3)(x) (requiring an interconnected VoIP provider requesting numbering resources directly from the Numbering Administrators to "[m]aintain the accuracy of all contact information and certifications in its application" and, if any contact information or certification is no longer accurate, to "file a correction with the Commission . . . within thirty (30) days of the change of contact information or certification").

Mitigation Database similarly make use of contact information imported directly from CORES.⁶¹ We seek comment on this view. Are there nevertheless any countervailing burdens that the Commission should consider in weighing this proposal? How should the Commission enforce such a requirement, if it were adopted? Should this proposed deadline apply to all entities registering for an FRN, or only those that must file in the Robocall Mitigation Database? Since Robocall Mitigation Database filers must obtain a business-type FRN in order to submit a certification, should we apply this requirement only to business-type FRNs, rather than individual FRNs? Are there reasons a longer duration of time may be necessary for individual FRN holders? Are there alternative proposals the Commission should consider to ensure the accuracy of information submitted to CORES, and by extension, other FCC databases that make use of information imported from CORES?

19. *Multi-Factor Authentication.* We seek comment on whether to deploy multi-factor authentication functionality for the Robocall Mitigation Database and whether to require providers to use such technology in order to submit a filing to the Database. Multi-factor authentication, which requires use of multiple authentication protocols in order to grant access to an account—for example, a password and a one-time verification code—is more secure than authentication with a username and password alone.⁶² We note that the Commission’s Office of Managing Director recently required all CORES users to undergo two-factor authentication each time a user logs into CORES.⁶³ Under this system users are “prompted to request a six-digit secondary verification code, which will be sent to the email address(es) associated with each username.”⁶⁴ The code must then be entered into CORES by the user before accessing their account. Would a more robust authentication system of this kind be beneficial for the Robocall Mitigation Database? Why or why not? If the Commission were to require multi-factor authentication for the Database, what type of authentication protocol should the Commission employ? For example, in addition to a password, should the Commission require use of a one-time verification code provided by an authentication app or physical security key? We tentatively conclude that, under applicable OMB policy, if the Commission adopts multi-factor authentication for the Robocall Mitigation Database, we also will have to afford users the option to use “phishing-resistant authentication” methods.⁶⁵ We seek comment on this understanding and on users’ expectations regarding authentication methods. We also seek comment on the benefits and burdens associated with different means of deploying such functionality.

20. *Requiring Filers to Obtain a PIN to File in the Robocall Mitigation Database.* In addition, or as an alternative to the multi-factor authentication methods discussed above, we seek comment on increasing accountability for the accuracy of information submitted to the Robocall Mitigation Database by requiring an officer, owner, or other principal of a provider (collectively, “officer”) to obtain a PIN that must be entered before an Robocall Mitigation Database submission is accepted by the filing system. Currently, an officer is required to electronically sign a provider’s

⁶¹ See, e.g., FCC, *Intermediate Provider Registry Instructions* at 5 (Sept. 2020), <https://www.fcc.gov/file/19240/download>.

⁶² See Federal Trade Commission, *Use Two-factor Authentication to Protect Your Accounts*, <https://consumer.ftc.gov/articles/use-two-factor-authentication-protect-your-accounts#Two>.

⁶³ *Office of Managing Director Announces Implementation of Additional Security Safeguards for Users of FCC’s Commission Registration System (Cores)*, DA 24-219 (OMD Mar. 7, 2024) (*Two-Factor Authentication Notice*).

⁶⁴ *Two-Factor Authentication Notice* (finding that “[t]his additional layer of security will further safeguard against unauthorized access, thereby enhancing the overall integrity of information contained within the CORES system and improving the security of user data”).

⁶⁵ See Office of Management and Budget, *Memorandum for the Heads of Executive Departments and Agencies, Moving the U.S. Government Toward Zero Trust Cybersecurity Principles*, M-22-09 (Jan. 26, 2022) (“[P]ublic-facing agency systems that support MFA must give users the option of using phishing-resistant authentication within one year of the issuance of this guidance.”).

Robocall Mitigation Database certification.⁶⁶ By doing so, the officer declares that “under penalty of perjury” the information provided in the Robocall Mitigation Database submission is true and correct.⁶⁷ As noted above, the provider’s business name and address is imported from CORES, and contact information for an employee of the company responsible for robocall mitigation must be provided.⁶⁸ An officer is not, however, required to provide their own direct contact information or to make more specific certifications with respect to their role in ensuring that the provider submits and maintains accurate information in the Robocall Mitigation Database. We are concerned that this may lead to consultants and provider employees completing Robocall Mitigation Database submissions without sufficient diligence, and that an additional verification step by the responsible officer may be necessary to ensure that Robocall Mitigation Database certifications and robocall mitigation plans are submitted and kept up-to-date in accordance with our rules.

21. We therefore seek comment on whether we should require the signing officer to submit additional information and certifications to obtain a PIN that must be used to submit an Robocall Mitigation Database certification. Specifically, we seek comment on requiring the officer to complete a form, separate from the filing in the Robocall Mitigation Database and prior to certification thereto can be submitted, that collects: (1) A non-P.O. box street address and telephone number for the location of the office where the officer does business, and a direct business e-mail address for the officer;⁶⁹ (2) a business address, telephone number, and e-mail address for the provider’s registered agent for service of process in the District of Columbia (or a certification that such an agent is not required by section 1.47(h) of the Commission’s rules); and (3) certifications, under penalty of perjury pursuant to section 1.16 of the Commission’s rules, that the officer:

- Is authorized to submit the PIN form, Robocall Mitigation Database certification, and robocall mitigation plan on behalf of the provider;
- Has personally reviewed the provider’s Robocall Mitigation Database certification and robocall mitigation plan and verifies that the information provided in both is true and accurate;
- Verifies that the information in the PIN form is true and accurate;
- Understands that the provider is required to update the information submitted to the Robocall Mitigation Database within 10 business days of any changes, and that failure to do so could result in the provider’s filing being removed from the Robocall Mitigation Database and additional penalties permitted under law, including a forfeiture as discussed in Section B.1 below; and
- Understands that any false statements on the PIN form and in the Robocall Mitigation Database submissions can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), and removal of the provider’s filing from the Robocall Mitigation Database.

22. We tentatively conclude that we have authority to adopt this information collection under the provisions of the Communications Act cited herein.⁷⁰ We seek comment on this tentative conclusion

⁶⁶ 47 CFR § 64.6305(d)(3), (e)(3), (f)(3).

⁶⁷ FCC, *Robocall Mitigation Database External Filing Instructions* (Jan. 2024), <https://www.fcc.gov/sites/default/files/rmd-instructions.pdf>, at 21; *see also* 47 CFR § 1.16.

⁶⁸ *See supra* Section II.

⁶⁹ By direct business e-mail address, we mean a business e-mail address associated with the officer individually and used by them to conduct business in their official capacity, rather than a general e-mail inbox, such as “robocall.mitigation@provider.com,” which is not tied to any specific individual(s).

⁷⁰ *See infra* Section IV.

and on whether requiring the submission of this information to obtain a PIN to file in the Robocall Mitigation Database will improve the accuracy of the information in the Database. In particular, we seek comment on whether such a system would dissuade inaccurate or inadequately reviewed filings, or filings by bad actors by: (1) increasing direct accountability by an officer for reviewing, understanding, and verifying the contents of a provider's filing; and (2) providing additional direct contact information that can be used in enforcement actions if the business information imported from CORES or robocall mitigation contact information submitted to the Robocall Mitigation Database is inaccurate or becomes out of date. We seek comment on the scope of this information collection and whether it is sufficient to achieve these objectives. Should we collect additional or different information and certifications, and if so, what? Is there information that we could also collect to verify that the person completing the form is, in fact, an officer of a legitimate provider?⁷¹ Should we require that all filers, even those not required to under section 1.47(h) of the Commission's rules, have a registered agent in the District of Columbia and report that information via this separate PIN form? We believe that doing so would aid in Commission investigations into bad actors that should be removed from the Database and for purposes of service of process. We seek comment on whether and how such a requirement would facilitate these or other goals.

23. We seek comment on the benefits and burdens of such an information collection, and on any alternative approaches. What are the burdens and potential consequences of collecting this information? How could we mitigate these burdens? Are there, for example, confidentiality or privacy issues with collection of this information? Because the information that we propose to collect is about individuals in their official or business capacities, we expect that this information is low sensitivity, reducing the privacy risk associated with this proposed collection.⁷² We also anticipate that, relative to other Commission programs that collect personally identifiable information (PII) and/or Privacy Act records, fewer individuals, who generally are not members of vulnerable populations, will be required to submit this low-sensitivity information to the database, further reducing the privacy risk.⁷³ We seek comment on this analysis. We also note that our proposed requirement, discussed above, that filers update their information in CORES will help ensure the accuracy, relevance, timeliness, and completeness of the PII and/or records that we are proposing to collect.⁷⁴ Additionally, under the Federal Information Security Modernization Act of 2014 (FISMA), any information system that we would use to collect information and provide PINs would need to have applicable privacy and security controls to ensure the confidentiality, integrity, and availability of such information.⁷⁵ We therefore tentatively conclude that the overall privacy risk associated with this collection of information would be low. We seek comment on this tentative conclusion and the reasons for it. We also seek comment on whether the collection of this information would cause any undue delays for providers in submitting their filings.

24. We seek comment on the method by which the Commission could collect this information and generate the PIN for use by the officer when submitting an Robocall Mitigation Database filing. We expect that this information collection would require the use of a platform accessed via the Commission's website that would allow the officer to complete a digital form and then generate the PIN. We seek comment on any such platforms or other PIN-generating solutions that are currently in use,

⁷¹ To the extent necessary, the Commission will make necessary changes to the applicable System of Records under the Privacy Act. See Federal Communications Commission, *Privacy Act of 1974; System of Records*, 88 F.R. 77580 (Nov. 13, 2023) (FCC-2, Business Contacts and Certifications).

⁷² See, e.g., Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, *Preparing for and Responding to a Breach of Personally Identifiable Information*, OMB M-17-12, at 21 (2017).

⁷³ *Id.*; see also 42 U.S.C. § 2000ee-2(a)(5) (privacy impact assessment requires consideration of number of people affected).

⁷⁴ OMB, To the Heads of Executive Departments and Agencies, *Managing Information as a Strategic Resource*, Circular A-130, Section 5(f)(1)(e) (2016).

⁷⁵ 44 U.S.C. § 3554.

including any that are currently employed by other federal agencies. Are there other procedural issues we should consider? For example, should a provider be required to submit a new PIN form within 10 business days if the officer leaves the company or any information on the form changes? Should we require providers to obtain a PIN each time they revise their filing (i.e., a unique PIN for each submission) or just once (i.e., a unique PIN for each filer)? In keeping with the two-factor authentication protocol deployed recently for CORES, we believe that requiring a PIN for each submission would provide greater security benefits. We seek comment on this view.

25. We also seek comment on whether to require all providers that have already filed in the Robocall Mitigation Database to submit the separate form we propose above⁷⁶ as a prerequisite to obtaining a PIN, so that the Commission has the same information on file for all providers in the Database. We also seek comment on any procedural steps that would guard against bad actors submitting false information to obtain a PIN. Finally, we seek comment on delegating authority to the Wireline Competition Bureau, in consultation with the Office of the Managing Director, to take the steps necessary to implement any system for collecting the information required to generate and provide Robocall Mitigation Database filers with a PIN, to publish instructions for providers on how to use the system, and to establish additional filing requirements needed to achieve the objectives of the system.

26. *Requiring Providers to Remit a Filing Fee.* We next seek comment on requiring providers to pay a fee when submitting filings to the Robocall Mitigation Database. Section 8(a) of Communications Act states that “[t]he Commission shall assess and collect application fees at such rates as the Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.”⁷⁷ Pursuant to the requirements of the RAY BAUM’S Act,⁷⁸ the Commission has adopted a schedule of fees based on the cost of processing applications, with cost determined based on direct labor costs.⁷⁹ The Commission uses time and staff compensation estimates to establish the direct labor costs of application fees, which are in turn based on applications processed by Commission staff found to be typical in terms of the amount of time spent on processing each type of application.⁸⁰ In

⁷⁶ *Supra* para. 21.

⁷⁷ 47 U.S.C. § 158(a). In 2018, as part of the RAY BAUM’S Act of 2018, Congress revised the Commission’s application fee authority by amending section 8 and adding section 9A to the Communications Act. Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act), Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 1084, Division P, Title I, § 103 (2018). Prior to the RAY BAUM’S Act, the Commission had limited authority to amend the application fee schedule, which was set out by Congress. The Commission was required to simply adjust these fees every two years to reflect changes in the Consumer Price Index; the Commission did not have the authority to make other changes to application fees or to add or delete fee categories. *See Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules*, Notice of Proposed Rulemaking, 36 FCC Rcd 1618, 1619, para. 3 (2020) (*Application Fee NPRM*).

⁷⁸ In order to implement the RAY BAUM’S Act, the Commission sought comment on and adopted a new streamlined schedule of application fees that aligns with the types of applications the Commission now receives and correlates the fees charged to the costs of processing the associated applications. *See Application Fee NPRM*, 36 FCC Rcd at 1618-19, para. 1; *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 (2020) (*2020 Application Fee Report and Order*).

⁷⁹ *See 2020 Application Fee Report and Order*, 35 FCC Rcd at 15092, para. 10. In reviewing any particular methodology, it is important to note that 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). Instead, reasonable approximations will suffice. *Id.*; *Mississippi Power & Light v. U.S. Nuclear Regulatory*, 601 F.2d 223, 232 (5th Cir. 1979); *National Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1105 (D.C. Cir. 1976); 36 Comp. Gen. 75 (1956).

⁸⁰ *See 2020 Application Fee Report and Order*, 35 FCC Rcd at 15092-93, paras. 11-12 (“We estimated the direct labor costs to process a particular application by multiplying an estimate of the number of hours needed for each
(continued....)”)

applying our statutory authority, we adhere to the goal of ensuring that our fees are fair, administrable, and sustainable.⁸¹

27. We tentatively conclude that submissions to the Robocall Mitigation Database are “applications” within the meaning of the RAY BAUM’s Act.⁸² The Commission has broadly construed the term “applications” to apply to a wide range of submissions for which filing fees are required,⁸³ including tariff filings containing the rates, terms, and conditions of certain services provided by telecommunications providers. Following a period of public notice, a tariff filing is deemed accepted unless the Commission takes action, which can include suspension or rejection of the tariff filing by staff.⁸⁴ We believe this process is analogous to Robocall Mitigation Database filings, which are accepted upon submission but may be subject to further action by the Commission, including removal from the Robocall Mitigation Database for failure to cure any identified deficiencies.⁸⁵ We thus believe that Robocall Mitigation Database filings may be deemed applications for the purposes of requiring a filing fee, and seek comment on this view.⁸⁶

28. Further, the Commission’s review of Robocall Mitigation Database submissions requires

(Continued from previous page)

task, up through first-level supervisory tasks required to process the application, by an estimate of the labor cost per hour for the employee performing the task and by an estimate of the probability that the task needed to be performed.”).

⁸¹ *Id.* at 15089-90, 15091-92, paras. 1, 7. This is the same overarching set of goals we employ in the context of our regulatory fee collections. See *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8464-65, paras. 14-16 (2012) (explanation of the three longstanding goals). The application of our overarching program goals, however, must work within the language of the statute. Moreover, in administering the application fee authority, 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*, 554 F.2d at 1106 & n.42. While the IOAA no longer applies to the Commission, we are nevertheless cognizant of broader legal issues raised by user fee and/or regulatory fee precedent. See House of Representatives Report No. 99-453 (1985) at 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).

⁸² Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 1084, Division P – RAY BAUM’s Act of 2018, Title I, § 103 (2018).

⁸³ *2020 Application Fee Report and Order*, 35 FCC Rcd at 15128, paras. 123-24.

⁸⁴ *Id.*

⁸⁵ See *infra* Section III.B.1. Additionally, the application fee proposed here in some ways mirrors the fee charged for filing formal complaints and pole attachment complaints. In calculating the fee for such complaints, the Commission noted that staff must still review the complaint after its receipt “for general conformance with the Commission’s complaint rules to determine if it is accepted for adjudication.” *2020 Application Fee Report and Order*, 35 FCC Rcd at 15130, para. 131. In response to a commenter’s argument that the fee for formal complaints should be lower, the Commission explained that the fee being assessed also covers “the costs of adjudicating such complaints.” *Id.* Thus, even after a complaint is filed and “a letter to the parties [is sent] indicating that the filing has been accepted or rejected,” Commission staff—like here—must still engage in a lengthy review process thereafter that involves “significant work” in order to adjudicate, i.e., process, the complaint. *Id.* at 15131, paras. 131-32.

⁸⁶ We note that in the *2020 Application Fee Report and Order*, the Commission recognized that, as a result of the changes it made then and “those made previously to implement the RAY BAUM’s Act . . . with respect to regulatory fees,” further revisions to the Part 1, Subpart G, Schedule of Statutory Charges and Procedures for Payment may be required. *2020 Application Fee Report and Order*, 35 FCC Rcd at 15153, para. 191. Since the creation of the Robocall Mitigation Database, which occurred after the adoption of the *Application Fee NPRM*, the Commission has gained a fuller understanding of the costs involved in processing submissions thereto, and now proposes a filing fee consistent with those costs.

a significant investment of labor hours that continues to increase. The original requirement for voice service providers to file certifications and robocall mitigation plans in the Robocall Mitigation Database resulted in more than 2,600 submissions. As noted above, the Commission has since expanded the scope of providers required to file in the Database and the information that must be filed. As a result, there are currently approximately 9,000 filings in the Robocall Mitigation Database, each comprising not only a certification form, but also a robocall mitigation plan that details the specific steps the provider is taking to mitigate illegal robocall traffic.⁸⁷

29. Each of those submissions must be reviewed by Commission staff to determine if they comply with the requirements of the Commission's caller ID authentication and robocall mitigation rules. This compliance review process requires significant staff resources, including analysts to review each filing, attorneys to perform compliance assessments, and a supervisory attorney to oversee the process and coordinate the referral of any deficient filings to the Enforcement Bureau. We estimate that this process involves \$100 per filing in costs.⁸⁸ We therefore propose to add "Robocall Mitigation Database Certification" as a service requiring an application fee in section 1.1105 of the Commission's rules,⁸⁹ and to set that application fee based on this cost estimate. We seek comment on whether it is appropriate for the Commission to assess an application fee for Robocall Mitigation Database submissions based on these costs, and if not, the scope of costs that should serve as the basis for the fee, if any. In so doing, we remind commenters that our section 8 authority is distinct from the Commission's authority with respect to other collections.⁹⁰ Application fees collected by the Commission are deposited in the general fund of the U.S. Treasury. Thus, while the determination of the fee amount will be based on cost, the collected fees are not used to fund Commission activities. In crafting comments, we ask that commenters explain whether their proposals are supported by the statute.

30. In addition, although not a basis for proposing a fee for Robocall Mitigation Database filings, we believe that requiring providers to submit a fee may have collateral public interest benefits, including (1) discouraging filings by bad actors by requiring them to use a traceable payment method; and (2) incentivizing better filings by requiring entities to incur a nominal expense upon filing or refiling, should they be removed from the Database for noncompliance. We seek comment on these beliefs.

⁸⁷ See FCC, *Robocall Mitigation Database*, https://fccprod.servicenowservices.com/rmd?id=rmd_listings.

⁸⁸ The Bureau estimates that each filing will require 40 minutes of analyst review at the GS-12 level; 20 minutes of attorney review at the GS-14 level; and 15 minutes of attorney supervisory review at the GS-15 level. The estimated total labor costs (including 20% overhead) for the analyst review (GS-12, step 5) of each filing is \$43 (0.66 hours * \$64.64 = \$43). The estimated labor costs (including 20% overhead) for the attorney review (GS-14, step 5) for each filing is \$32.95 (0.33 hours * \$98.84 = \$32.95). The estimated total labor costs (including 20% overhead) for the attorney supervisory review (GS-15, step 5) for each filing is \$26.71 (0.25 hours * \$106.85 = \$26.71). The total labor costs per filing review is \$102.66 (\$43 + \$32.95 + \$26.71). Salary data is sourced from the Office of Personnel Management and include overhead costs based on 2,087 annual hours. OPM, Salary Table 2024-DCB, <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB.pdf>. Based on these hourly rates and the estimated time for processing each filing, the Bureau proposes that the filing fee is \$100 per filing, and we seek comment on this determination.

⁸⁹ 47 CFR § 1.1105.

⁹⁰ In particular, the Commission is required by Congress to assess and collect as an offsetting collection regulatory fees each year in an amount that can reasonably be expected to equal the amount of the Commission's Salaries and Expenses (S&E) annual appropriation. 47 U.S.C. § 159. The Commission is also directed by Congress to recover, as an offsetting collection, against auction proceeds costs incurred, subject to an annual cap, in developing and implementing our section 309(j) spectrum auctions program. Both such collections are deposited with the U.S. Treasury and credited to the Commission's account. 47 U.S.C. §§ 159(f), 156(a), and 309(j)(8)(B). For more information about the Commission's collections and budgetary authority, the Commission's annual financial statement and budget estimates for Congress provide helpful material.

31. We seek comment on when the Commission should collect the fee. Should they be collected only with initial filings or also when filings are updated, given that Commission staff will need to re-review the updated filings? We note that currently, there is no requirement that providers refile in the Database, outside of a change in the underlying information contained in the filing, or a change in the Commission's Robocall Mitigation Database filing requirements necessitating providers to resubmit their filings.⁹¹ Should the fee be collected from existing filers, and if so, under what circumstances—e.g., when a provider refiles to update their information? Should the fee be collected if a provider refiles after being removed from the Robocall Mitigation Database pursuant to an enforcement action? Would assessing a refiling fee deter providers, particularly smaller providers, from updating their policies and procedures? We seek comment on these and any other procedural matters relevant to the collection of a filing fee for the Robocall Mitigation Database.

32. *Red-Light Rule.* Finally, we seek comment on whether to apply the Commission's "red-light" rule to Robocall Mitigation Database filings. Under the red light rule, the Commission will not process applications and other requests for benefits by parties that owe non-tax debt to the Commission.⁹² In the context of our rules implementing the Debt Collection Improvement Act, the Commission has noted some filings with the Commission go into effect immediately "thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect."⁹³ In such situations, the Commission has the ability to take appropriate action after the fact for noncompliance with any of the Commission's rules.⁹⁴ In the context of filings to the Commission's Intermediate Provider Registry, which similarly "make[s] registrations immediately effective upon receipt," the Commission determined that "any applicable red-light check will be conducted after intermediate provider registration; appropriate action, if any, will be taken against intermediate providers who are later discovered to be delinquent debtors, including de-registration."⁹⁵ We seek comment on whether to apply such an approach to Robocall Mitigation Database filings, and on any alternative approaches to conducting a red-light check for Database filers.

2. Availability and Use of Data Validation Tools

33. We seek comment on technological and marketplace innovations that the Commission could employ to validate data entered into Robocall Mitigation Database filings and require filers to take a more proactive role in ensuring that accurate and complete information is submitted to the Database in the first instance. Specifically, we seek comment on software and other technical solutions that would cross-reference addresses and other contact details submitted by filers against other data sources and flag actual or potential discrepancies for filers to resolve. What tools could be used to cross-reference data entered into Robocall Mitigation Database certifications against reliable external sources and flag discrepancies, such as confirming the validity of address information submitted to the RMD against a United States Postal Service (USPS) database?⁹⁶ How do the tools work and how have they been integrated into systems to prompt users to confirm the validity of the information being entered into the system and correct any errors? What are the costs of integrating such tools into a system, and what are

⁹¹ See, e.g., *Wireline Competition Bureau Announces Robocall Mitigation Database Filing Deadlines and Instructions and Additional Compliance Dates*, WC Docket No. 17-97, Public Notice, DA 24-73 (WCB Jan. 25, 2024) (requiring all providers to resubmit their filings in order to provide additional information).

⁹² 47 CFR § 1.1910.

⁹³ *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540, 6544, para. 12 (2004) (citing 47 U.S.C. §§ 203, 206).

⁹⁴ *Id.*

⁹⁵ *Rural Call Completion*, WC Docket No. 13-39, Third Report and Order, 33 FCC Rcd 8400, 8410, para. 24 (2018).

⁹⁶ For example, the USPS offers several web-based tools including an API for "Address Validation/Standardization." See USPS, Address Information, USPS Web Tools Application Programming Interface User Guide, <https://www.usps.com/business/web-tools-apis/address-information-api.pdf>.

the technical and legal requirements for doing so?⁹⁷ Would integrating such tools into the Robocall Mitigation Database raise any legal, privacy, or policy concerns?⁹⁸ While information submitted by providers to the Robocall Mitigation Database is generally public, providers may request confidential treatment of information included in their robocall mitigation plans. Would allowing a data validation tool to cross-reference data from Robocall Mitigation Database filings against an external data source raise concerns about protecting confidential or proprietary information? Are there ways to mitigate any such concerns?

34. We seek comment on whether the Commission should prevent a filing from being submitted to the Robocall Mitigation Database if any technical validation tools employed flag a data discrepancy and the filer fails to resolve that discrepancy. For example, if the Commission were to employ a technical solution for verifying all or part of an address, and the provider does not or cannot submit an address that can be validated by the solution, should the filing be provisionally rejected until the provider finds a way to resolve the discrepancy? Or, should the filing be accepted by the system but flagged as an internal warning to the Commission that the filing should be prioritized for compliance review and enforcement? Is there a middle ground that would allow the system to hold the filing containing the unvalidated address while the provider seeks to resolve the discrepancy through other means with Commission staff, e.g., through the manual submission of documents that corroborate the submitted address? We seek comment on the benefits and burdens of employing a technical approach to Robocall Mitigation Database data validation, and on how the Commission should seek to integrate such tools into its review of Robocall Mitigation Database filings.

B. Increased Consequences for Submitting False or Inaccurate Information to the Robocall Mitigation Database

1. Establishing Forfeiture for Submitting Inaccurate or False Certification Data

35. We propose to establish a separate base forfeiture amount for submitting false or inaccurate information to the Robocall Mitigation Database. In the *Sixth Caller ID Authentication Report and Order*, the Commission found that Robocall Mitigation Database filings are Commission authorizations.⁹⁹ The Commission may impose a forfeiture against any person found to have willfully or repeatedly failed to comply substantially with the terms and conditions of any authorization issued by the Commission.¹⁰⁰ In the *Fifth Caller ID Authentication Further Notice*, the Commission proposed to “impose the highest available forfeiture for failures to appropriately certify in the Robocall Mitigation Database.”¹⁰¹ We now propose a base forfeiture of \$10,000 for each violation for filers that submit false or inaccurate information to the Robocall Mitigation Database. The Commission has set the base forfeiture for failure to file required forms or information at \$3,000.¹⁰² We tentatively conclude that

⁹⁷ For example, we note that establishing a “matching program” with another Federal or non-Federal entity requires entering into a written matching agreement under the computer matching provisions of the Privacy Act of 1974. *See* 5 U.S.C. § 552a(o). However, we tentatively conclude that the validation of filers to the Robocall Mitigation Database would not qualify as a matching program since the purpose of such validation does not relate to Federal benefits programs. *See* 5 U.S.C. § 552a(a)(8) (defining the term “matching program”). We seek comment on this tentative conclusion.

⁹⁸ We note, for instance, that the applicable system of records notice permits disclosures, as a routine use, to non-federal personnel, including contractors and other vendors, and specifically “identity verification service[]” providers. FCC-2, Business Contacts and Certifications, 88 F.R. at 77581-82.

⁹⁹ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2608, para. 70.

¹⁰⁰ 47 U.S.C. § 503(b)(1)(A); 47 CFR § 1.80(a)(1).

¹⁰¹ *Fifth Caller ID Authentication Further Notice*, 37 FCC Rcd at 6943, para. 207.

¹⁰² 47 CFR § 1.80(b)(11) tbl. 1.

submitting false or inaccurate information to the RMD warrants a significantly higher penalty, and seek comment on this tentative conclusion. What are the benefits to this approach? Would a higher or lower base forfeiture amount be more appropriate? Alternatively, we propose to impose the statutory maximum forfeiture amount allowable under section 503 of the Communications Act for submitting false or inaccurate information to the Robocall Mitigation Database. The Commission has set the statutory maximum as the base forfeiture for violations of section 1.17 of our rules related to misrepresentation and lack of candor in investigatory or adjudicatory matters.¹⁰³ Is submitting false or inaccurate information to the RMD similar to the Commission's misrepresentation and lack of candor rules to justify the highest possible penalty? What are the benefits and drawbacks to this alternative approach? We seek comment on these proposals.

36. For either proposal, should we consider each instance of false or inaccurate information a single violation or a continuing violation for each day the false information remains in the Robocall Mitigation Database? Are there particular aggravating or mitigating factors we should take into consideration when determining the amount of a forfeiture penalty? Or are the aggravating and mitigating factors set forth in our rules sufficient?¹⁰⁴ Should we use the same maximum forfeiture regardless of whether the violator is a common carrier or not? Currently, common carriers may be assessed a maximum forfeiture of \$2,449,575 for a continuing violation, while entities not explicitly mentioned in section 503 of the Communications Act may only be assessed a maximum forfeiture of \$183,718 for a continuing violation.¹⁰⁵ In the *Sixth Caller ID Authentication Report and Order*, the Commission found it should not impose a higher maximum penalty on common carriers for violations of the mandatory blocking rules.¹⁰⁶ Should we take a similar approach here? Are there any practical or legal considerations? We seek comment on these proposals.

37. Finally, we propose to find that we can impose a forfeiture on filers that fail to update information that has changed in the Robocall Mitigation Database within 10 business days. All filers in the Robocall Mitigation Database are required to update their filings within 10 business days if any information they are required to submit has changed.¹⁰⁷ We propose a base forfeiture of \$1,000 for failure to update information within 10 business days.¹⁰⁸ We propose treating it as a continuing violation for every day the inaccurate information remains in the Robocall Mitigation Database, with a maximum forfeiture of \$24,496 for each day of the continuing violation up to the statutory maximum of \$183,718. We seek comment on these proposals. Should we establish separate base and maximum forfeiture amounts for failing to update a filing within 10 business days? Should the violation be a single violation or a continuing violation for each day the non-updated information remains in the Robocall Mitigation Database? If it is a continuing violation, what should the maximum forfeiture for the continuing violation be?

2. Authorizing Permissive Blocking for Facially Deficient Filings

38. We next propose to authorize downstream providers to permissively block traffic by Robocall Mitigation Database filers that have been given notice that their robocall mitigation plans are facially deficient and that fail to correct those deficiencies within 48 hours. We seek comment on this proposal.

39. The Commission's rules currently require downstream providers to refuse traffic from

¹⁰³ *Id.* § 1.17(a).

¹⁰⁴ *See id.* § 1.80(b)(11) tbl. 3.

¹⁰⁵ *Compare id.* § 1.80(b)(2) with *id.* § 1.80(b)(10).

¹⁰⁶ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2602, para. 55.

¹⁰⁷ 47 CFR § 64.6305(d)(5) (voice service provider obligation), 64.6305(e)(5) (gateway provider obligation), 64.6305(f)(5) (non-gateway intermediate provider obligation).

¹⁰⁸ *Id.* § 1.80(b)(11) tbl. 1 (setting the base forfeiture amount at \$1000 for failure to maintain required records).

providers that are not in the Robocall Mitigation Database.¹⁰⁹ This means that when a provider is removed from the Database, it is effectively precluded from operating as a provider of voice services in the United States. For this reason, the Commission has recognized that removal of Robocall Mitigation Database submissions has severe consequences and is arguably equivalent to revoking a license,¹¹⁰ and thus has adopted notice and opportunity to cure procedures before removal of filings from the Robocall Mitigation Database consistent with the Administrative Procedure Act (APA).¹¹¹ For most filing deficiencies, the Commission follows a three-step process for removal, whereby:

(1) the Wireline Competition Bureau contacts the provider, notifying it that its filing is deficient, explaining the nature of the deficiency, and providing 14 days for the provider to cure the deficiency; (2) if the provider fails to rectify the deficiency, the Enforcement Bureau releases an order concluding that a provider's filing is deficient based on the available evidence and directing the provider to explain, within 14 days, 'why the Enforcement Bureau should not remove the Company's certification from the Robocall Mitigation Database' and giving the provider a further opportunity to cure the deficiencies in its filing; and (3) if the provider fails to rectify the deficiency or provide a sufficient explanation why its filing is not deficient within that 14-day period, the Enforcement Bureau releases an order removing the provider from the Robocall Mitigation Database.¹¹²

40. In the *Sixth Caller ID Authentication Report and Order*, however, the Commission recognized that the failure to submit a robocall mitigation plan within the meaning of our rules constitutes a facial deficiency that warrants an expedited removal process.¹¹³ A robocall mitigation plan is facially deficient if it fails to submit any information regarding the "specific reasonable steps" the provider is taking to mitigate illegal robocalls.¹¹⁴ In such cases, the Commission found that providers have "willfully" violated its Robocall Mitigation Database filing rules and an expedited removal process is therefore warranted. Under this two-step expedited procedure for removing a facially deficient certification, the Enforcement Bureau will: (1) issue a notice to the provider explaining the basis for its conclusion that the certification is facially deficient and providing an opportunity for the provider to cure the deficiency or explain why its certification is not deficient within 10 days; and (2) if the deficiency is

¹⁰⁹ See *id.* § 64.6305(g).

¹¹⁰ The term "license" is broadly defined under the APA to include "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. § 551(8). See also *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2604-05, para. 62 n.226 ("Although we do not reach a definitive conclusion here, the removal of a provider's certification from the Robocall Mitigation Database—which will lead to the mandatory blocking of the provider's traffic by downstream providers—is arguably equivalent to the revocation of a license.").

¹¹¹ See 5 U.S.C. § 558(c) (holding that an agency may only withdraw or revoke a "license" through "an agency proceeding" if the agency has already provided "notice by the agency in writing of the facts or conduct which may warrant the action" and an "opportunity to demonstrate or achieve compliance with all lawful requirements" except "in cases of willfulness or those in which public health, interest or safety requires otherwise").

¹¹² *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2604, para. 60 (citations omitted).

¹¹³ See *id.* at 2604, para. 61.

¹¹⁴ See *id.* ("While it is not practical to provide an exhaustive list of reasons why a filing would be considered 'facially deficient,' examples include, without limitation, instances where the provider only submits: (1) a request for confidentiality with no underlying substantive filing; (2) only non-responsive data or documents (e.g., a screenshot from the Commission's website of a provider's [FRN] data or other document that does not describe robocall mitigation efforts); (3) information that merely states how STIR/SHAKEN generally works, with no specific information about the provider's own robocall mitigation efforts; or (4) a certification that is not in English and lacks a certified English translation.").

not cured or the provider fails to establish that there is no deficiency within that 10-day period, issue an order removing the provider from the Database.¹¹⁵

41. We seek comment on whether the Commission should adopt additional measures to protect consumers where submissions to the Robocall Mitigation Database demonstrate willful violations of the Commission's rules. Specifically, we propose to allow downstream providers to permissively block traffic from providers that have submitted facially deficient robocall mitigation plans beginning 48 hours after the agency issues the notice of facial deficiency and continuing until either the deficiency is cured or the provider's certification is removed from the Robocall Mitigation Database, which would trigger the mandatory blocking requirement. We propose to do so through a three step process: (1) a notice would be issued to the provider that its robocall mitigation plan is facially deficient because it fails to describe the specific reasonable steps that the provider is taking to avoid carrying and transmitting illegal robocalls; (2) the provider would be allowed 48 hours to cure this facial deficiency by uploading a robocall mitigation plan that sufficiently describes its mitigation practices; and (3) if it fails to do so, the Wireline Competition Bureau would apply a flag to the facially deficient filing in the Robocall Mitigation Database to inform other providers that they may permissively block traffic from that provider after providing notice to the Commission that they intend to do so.

42. We view this process to be similar to that authorized when the Commission sends cease-and-desist letters pursuant to section 64.1200(k)(4) of our rules, which states:

A provider may block voice calls or cease to accept traffic from an originating or intermediate provider without liability under the Communications Act or the Commission's rules where the originating or intermediate provider, when notified by the Commission, fails to effectively mitigate illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. Prior to initiating blocking, the provider shall provide the Commission with notice and a brief summary of the basis for its determination that the originating or intermediate provider meets one or more of these two conditions for blocking.¹¹⁶

In the context of the Robocall Mitigation Database, the flag applied to the filing would constitute notice that the provider has failed to remedy a facial deficiency in its filing within 48 hours and that downstream providers may block traffic from that provider if they submit a notice to the Commission that they intend to do so for the reason stated in the notice. We believe that there are equivalencies between the context in which the Commission issues cease-and-desist letters pursuant to section 64.1200(k)(4) of the Commission's rules and a willful failure to submit the required description of a provider's robocall mitigation practices in the Robocall Mitigation Plan. We seek comment on this belief. In the former, the Enforcement Bureau has found evidence that the provider has originated or transmitted illegal robocalls (e.g., traceback data).¹¹⁷ The willful violation of the Commission's rules requiring providers to describe the steps they are taking to avoid carrying and transmitting illegal robocalls supports a presumption that no such steps are being taken and that the provider is doing nothing to stop illegal traffic as required by our rules.

43. We seek comment on this view and whether applying the three-step process for permissive blocking proposed above in the context of facially deficient Robocall Mitigation Database filings is warranted. Are there considerations that apply when the Commission issues cease-and-desist

¹¹⁵ *Id.* at 2605, para. 62.

¹¹⁶ 47 CFR § 64.1200(k)(4).

¹¹⁷ See, e.g., Letter from Loyaan Egal, Chief, Enforcement Bureau, FCC, to Mohammad Hossain, Member, Alliant Financial, 2024 WL 2316149, at *1 (May 20, 2024); Letter from Loyaan Egal, Chief, Enforcement Bureau, FCC, to Stephen Matlock, CEO, DigitalIPvoice, Inc., 2024 WL 1701182, at *1 (Apr. 17, 2024); Letter from Loyaan Egal, Chief, Enforcement Bureau, FCC, to Felix Hernandez, Compliance Officer, Veriwave Telco, LLC, 2024 WL 1526071, at *1 (Apr. 4, 2024).

letters pursuant to section 64.1200(k)(4) of the Commission's rules that do not apply in the context of the Robocall Mitigation Database? For instance, is it significant that in the context of section 64.1200(k)(4) cease-and-desist letters, the Enforcement Bureau has evidence that illegal robocalls have actually been transmitted, whereas here, the evidence would be that the provider has willfully failed to describe the reasonable steps it is taking to mitigate illegal traffic? If commenters argue that is not a sufficient showing to authorize permissive blocking from a provider that has willfully violated the Commission's robocall mitigation rules, what showing would be sufficient to authorize permissive blocking, if any?

44. Is 48 hours an appropriate amount of time to allow a provider with a facially deficient plan to cure the deficiency to avoid permissive blocking, or should more or less time be allowed prior to opening the window for permissive blocking? Should the new rule include a safe harbor from liability under the Communications Act or the Commission's rules for providers that engage in permissive blocking under this new rule if they notify the Commission that they intend to do so, as under section 64.1200(k)(4)? What information should be included in a notice to the Commission that a provider intends to permissively block traffic from another provider? Should they simply state that they intend to block traffic from the provider that has been flagged by the Commission due to its facially deficient robocall mitigation plan, or should additional information be required? Should the new rule also address situations where the facial deficiency is cured after the Wireline Competition Bureau applies a flag? In such situations, we propose that the Wireline Competition Bureau would take down the flag applied to the Robocall Mitigation Database filing and notify any providers that have commenced permissive blocking to cease such blocking. We seek comment on this approach and whether our rules should require providers to cease permissive blocking within a specified period of time. If so, what is an appropriate timeframe?

45. What are the risks to legitimate providers, and their customers, of authorizing permissive blocking in the context of facially deficient robocall mitigation plans submitted to the Robocall Mitigation Database, and do those risks outweigh the public interest benefits of enabling providers to decline traffic from providers that have demonstrated a willful disregard for their duty to mitigate illegal robocalls without penalty under our rules? What are the costs of authorizing permissive blocking in this context, and do the public interest benefits outweigh those costs? To the extent commenters argue that the risks and costs of the proposed permissive blocking process are high, is there a way to modify the process to minimize those risks and costs, or to otherwise improve it in a manner that appropriately balances the public interest objective of protecting consumers from illegal traffic against potential burdens to legitimate providers? We invite comment on these or any other points the Commission should consider when assessing the merits of our permissive blocking proposal.

46. *Scope of Facial Deficiencies.* As stated above, we propose to limit any permissive blocking measure to circumstances where the robocall mitigation plan submitted to the Robocall Mitigation Database is facially deficient, versus circumstances that require the Commission to make a qualitative judgment about the sufficiency of the measures described in the plan. In the *Sixth Caller ID Authentication Report and Order*, the Commission found it was "not practical to provide an exhaustive list of reasons why a filing would be considered 'facially deficient,'" but provided several examples, including "where the provider only submits: (1) a request for confidentiality with no underlying substantive filing; (2) only non-responsive data or documents (e.g., a screenshot from the Commission's website of a provider's [FRN] data or other document that does not describe robocall mitigation efforts); (3) information that merely states how STIR/SHAKEN generally works, with no specific information about the provider's own robocall mitigation efforts; or (4) a certification that is not in English and lacks a certified English translation."¹¹⁸ We seek comment on whether there are additional examples of robocall mitigation plan deficiencies that would rise to the level of willful violations of the Commission's robocall mitigation rules within the meaning of section 9(b) of the APA.¹¹⁹ While the Commission has not set a

¹¹⁸ *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2604, para. 61.

¹¹⁹ 5 U.S.C. § 558(c) (requiring notice by the agency and opportunity to cure before revocation of a license).

particular format or minimum requirements for robocall mitigation plans, understanding the value of allowing providers flexibility to develop robocall mitigation programs that are specific to their networks,¹²⁰ are there factors short of a complete failure to describe a provider's specific robocall mitigation practices that could render a mitigation plan facially deficient? For instance, are there any omissions that should universally render any robocall mitigation plan filed by any provider deficient, such that the Commission should adopt a standard that a failure to address that subject constitutes a willful violation of our rules? Is there a level of brevity that clearly falls below the requirement to describe *specific* reasonable steps being taken by the provider? While we do not intend to define a specific standard for facial deficiency, we do seek comment on whether there are any other bright line circumstances to which the standard should be applied generally and for the purposes of the permissive blocking process proposed above.

47. *Delegation of Authority.* Should the Commission authorize permissive blocking when a provider submits a facially deficient robocall mitigation plan to the Robocall Mitigation Database, we propose to delegate authority to the Wireline Competition Bureau to design the permissive blocking system, including the process for issuing notifications to providers that their robocall mitigation plan is facially deficient, the contents of that notice, the procedures for allowing the providers to remedy the deficiency by uploading a robocall mitigation plan that describes their robocall mitigation practices, the mechanism for applying a flag to the Robocall Mitigation Database filing of any provider that fails to do so within 48 hours, the process for collecting notifications from downstream providers that they intend to block traffic from the flagged provider, the content requirements for such notifications, and the process for removing a flag and notifying blocking providers in the event that a provider cures its facially deficient filing after a flag has been applied. We propose to delegate authority to the Wireline Competition Bureau to make any necessary changes to the Robocall Mitigation Database to implement these processes and direct the Bureau to release a public notice providing updated instructions and training materials regarding any relevant changes to the Database. We seek comment on this approach.

IV. LEGAL AUTHORITY

48. We propose to adopt the foregoing obligations in part pursuant to the legal authority relied upon by the Commission in prior caller ID authentication and call blocking orders.¹²¹ We propose to rely upon sections 201(b), 202(a), and 251(e) of the Act, the Truth in Caller ID Act, and section 4 of the TRACED Act to authorize downstream providers to permissively block traffic by facially deficient Robocall Mitigation Database filers that have failed to correct those deficiencies within 48 hours after notice, and to require corporate officers to obtain a PIN before filing in the Robocall Mitigation Database.¹²²

49. We propose to rely on sections 501, 502, and 503 of the Act to establish forfeiture amounts for submitting inaccurate or false certification data to the Robocall Mitigation Database.¹²³ We propose to rely on our authority under section 8 of the Act to add Robocall Mitigation Database filings to the Commission's Schedule of Application Fees.¹²⁴ We believe the Commission has ample authority to adopt the foregoing obligations related to the Robocall Mitigation Database, as well as any related

¹²⁰ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1897, 1899, paras. 74, 76; *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2590, para. 31 & n.118.

¹²¹ See, e.g., *Sixth Caller ID Authentication Report and Order*, 38 FCC Rcd at 2617, para. 90.

¹²² See 47 U.S.C. §§ 201(b), 202(a), 251(e).

¹²³ 5 U.S.C. §§ 501, 502, 503.

¹²⁴ 47 U.S.C. § 158(a), (c).

administrative enhancements pertaining to CORES.¹²⁵ We seek comment on this view and whether there are any alternative sources of authority that we should consider.

50. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,¹²⁶ including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations¹²⁷ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

V. PROCEDURAL MATTERS

51. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹²⁸ 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.”¹²⁹ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. The Commission invites the general public, particularly small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

52. *Paperwork Reduction Act.* This *Notice of Proposed Rulemaking* may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and 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.

¹²⁵ *See, e.g.*, 31 U.S.C. § 3512(b) (mandating the establishment and maintenance of systems of accounting and internal controls); 47 CFR Part 1, Subpart O (implementing the requirements of the Debt Collection Improvement Act of 1996); *Office of Managing Director Announces Implementation of Additional Security Safeguards for Users of FCC’s Commission Registration System (CORES)*, DA 24-219 (OMD Mar. 7, 2024).

¹²⁶ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹²⁷ We define the term “equity” consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

¹²⁸ 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).

¹²⁹ 5 U.S.C. § 605(b).

53. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

54. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Notice of Proposed Rulemaking* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹³⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.¹³¹

55. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- 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 hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

¹³⁰ 47 CFR §§ 1.1200 *et seq.*

¹³¹ *Id.* § 1.49(f).

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

57. *Additional Information.* For further information about the *Notice of Proposed Rulemaking*, contact Erik Beith, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at Erik.Beith@fcc.gov.

VI. ORDERING CLAUSES

58. Accordingly, pursuant to sections 4(i), 4(j), 8, 201, 202, 217, 227, 227b, 251(e), 303(r), 502, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 158, 201, 202, 217, 227, 227b, 251(e), 303(r), 501, 502, and 503, this *Notice of Proposed Rulemaking* IS ADOPTED.

59. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice of Proposed Rulemaking*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In order to continue the Commission's work of protecting American consumers from illegal calls, the *Notice of Proposed Rulemaking* seeks comment on ways to ensure and improve the overall quality of submissions to the Robocall Mitigation Database (RMD).⁴ In its review of filings by providers in the RMD, the Commission staff noted a lack of information ranging from a failure to provide accurate contact information for employees responsible for completing certifications of robocall mitigation practices, to failing to submit robocall mitigation plans with sufficient detail. The *Notice of Proposed Rulemaking* proposes and seeks comment on measures to increase accountability for providers that submit inaccurate and false information to the RMD and fail to update their filings when the information they contain changes, as required by the Commission's rules.⁵ The *Notice of Proposed Rulemaking* also invites comment on any other procedural steps the Commission could require to increase the RMD's effectiveness as a compliance and consumer protection tool.⁶

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154(i), 154(j), 201, 202, 217, 227, 227b, 251(e), and 303(r).

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, if adopted.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the

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 *Notice of Proposed Rulemaking* Section III.A.

⁵ *Id.* Section III.B.

⁶ *Id.* Section I.

⁷ 5 U.S.C. § 603(b)(3).

⁸ *Id.* § 601(6).

same meaning as the term “small-business concern” under the Small Business Act.⁹ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹¹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹² These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹³

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.”¹⁴ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁵ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁶

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ U.S. Census Bureau data from the 2022 Census

⁹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ See 15 U.S.C. § 632.

¹¹ 5 U.S.C. § 601(3)-(6).

¹² 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).

¹³ *Id.*

¹⁴ 5 U.S.C. § 601(4).

¹⁵ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

¹⁶ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁷ 5 U.S.C. § 601(5).

of Governments¹⁸ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number, there were 36,845 general purpose governments (county,²⁰ municipal, and town or township²¹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²²) with enrollment populations of less than 50,000.²³ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁴

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁵ 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.²⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁸

¹⁸ 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/economic-census/year/2022/about.html>.

¹⁹ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-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. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

²⁰ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²¹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²² See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²³ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁴ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁵ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁶ *Id.*

²⁷ *Id.*

9. 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 that operated in this industry 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 4,590 providers that reported they were engaged in the provision of fixed local services.³² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³⁴ is the closest industry with an SBA small business size standard.³⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁸ Of this number, 2,964 firms operated with fewer than 250 employees.³⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring

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²⁸ 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.

²⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

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>; <https://docs.fcc.gov/public/attachments/DOC-379181A1.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 See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁶ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁷ *Id.*

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.⁴⁰ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *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 Carriers⁴² is the closest industry with an SBA small business size standard.⁴³ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁶ 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.⁴⁷ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁸ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (CLECs)*. 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.⁴⁹ Wired Telecommunications Carriers⁵⁰ 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.⁵¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms

⁴⁰ 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>.

⁴¹ *Id.*

⁴² See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁴ *Id.*

⁴⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁷ 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>.

⁴⁸ *Id.*

⁴⁹ 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.

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).

that operated in this industry for the entire year.⁵² Of this number, 2,964 firms operated with fewer than 250 employees.⁵³ 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 service providers.⁵⁴ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁶ is the closest industry with a SBA small business size standard.⁵⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁰ 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.⁶¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

14. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶² For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet

⁵² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁵ *Id.*

⁵⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁸ *Id.*

⁵⁹ 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>.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶² 47 U.S.C. § 543(m)(2).

the definition of a small cable operator.⁶³ Based on industry data, only six cable system operators have more than 498,000 subscribers.⁶⁴ 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.⁶⁵ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁶⁶ is the closest industry with a SBA small business size standard.⁶⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁷¹ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁷² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

⁶³ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

⁶⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

⁶⁵ 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).

⁶⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁸ *Id.*

⁶⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷¹ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁷² *Id.*

communications via the airwaves.⁷³ 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.⁷⁴ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁷⁶ Of that number, 2,837 firms employed fewer than 250 employees.⁷⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁷⁸ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁷⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁸⁰ 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.⁸¹ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁸² Of this number, 242 firms had revenue of less than \$25 million.⁸³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.⁸⁴ Of these providers, the Commission estimates that approximately

⁷³ 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>.

⁷⁴ *Id.*

⁷⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁷ *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.

⁷⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁹ *Id.*

⁸⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁸¹ See 13 CFR § 121.201, NAICS Code 517410.

⁸² 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: EC1700SIZEREVFI, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFI&hidePreview=false>.

⁸³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

⁸⁴ 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>.

42 providers have 1,500 or fewer employees.⁸⁵ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

18. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁸⁶ 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.⁸⁷ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁸ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁹⁰ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁹¹ Of that number, 1,375 firms operated with fewer than 250 employees.⁹² 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.⁹³ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁹⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁹⁵ 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.⁹⁶ Mobile virtual network operators (MVNOs) are included in this industry.⁹⁷ The SBA small business size standard for Telecommunications Resellers

⁸⁵ *Id.*

⁸⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁹¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁹² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹³ 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>.

⁹⁴ *Id.*

⁹⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁹⁶ *Id.*

⁹⁷ *Id.*

classifies a business as small if it has 1,500 or fewer employees.⁹⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁹⁹ Of that number, 1,375 firms operated with fewer than 250 employees.¹⁰⁰ Additionally, based on Commission data in the 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.¹⁰¹ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.¹⁰² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers¹⁰³ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.¹⁰⁴ Mobile virtual network operators (MVNOs) are included in this industry.¹⁰⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.¹⁰⁶ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.¹⁰⁷ Of that number, 1,375 firms operated with fewer than 250 employees.¹⁰⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.¹⁰⁹ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer

⁹⁸ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁹⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

¹⁰² *Id.*

¹⁰³ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

¹⁰⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

employees.¹¹⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹¹¹ 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.¹¹² 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.¹¹³ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹¹⁵ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁶ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

22. In the *Notice of Proposed Rulemaking*, the Commission proposes and seeks comment on imposing several reporting, recordkeeping, and compliance obligations on various providers, many of whom may be small entities. Specifically, the *Notice of Proposed Rulemaking* proposes to require all entities and individuals that file in the Commission Registration System (CORES) to update any information required by the system within 10 business days of any changes.¹¹⁷

23. With respect to the RMD, the *Notice of Proposed Rulemaking* seeks comment on whether to deploy multi-factor authentication functionality and whether to require providers to use such technology in order to submit a filing to the Database.¹¹⁸ In addition, or as an alternative to multi-factor authentication, the *Notice of Proposed Rulemaking* seeks comment on requiring an officer, owner, or other principal of a provider to obtain a PIN that must be entered before an RMD submission is accepted by the filing system.¹¹⁹ In particular, we seek comment on whether the Commission should require the signing officer to submit additional information to obtain a PIN that must be used to submit an RMD certification, including: (1) a non-P.O. box street address and telephone number for the location of the

¹¹⁰ *Id.*

¹¹¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

¹¹⁷ *Notice of Proposed Rulemaking* Section III.A.1.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

office where the officer does business, and a direct business e-mail address for the officer; (2) a business address, telephone number, and e-mail address for the provider's registered agent for service of process (or a certification that such an agent does not exist); and (3) certifications, under penalty of perjury pursuant to 47 CFR § 1.16 of the Commission's rules.¹²⁰ The *Notice of Proposed Rulemaking* also seeks comment on the method by which the Commission could collect this information and generate the PIN for use by the officer when submitting an RMD filing. The *Notice of Proposed Rulemaking* seeks comment on whether to require providers to pay a fee when submitting filings to the RMD, and seeks comment on when the Commission should collect the fee.¹²¹ In addition, the *Notice of Proposed Rulemaking* seeks comment on technological innovations that the Commission could employ to validate data entered into RMD filings, specifically, on software and other technical solutions that would cross-reference addresses and other contact details submitted by filers against other data sources, and flag actual or potential discrepancies for filers to resolve before the filing is submitted to the Commission.¹²²

24. With regard to our enforcement of these proposed rules, the *Notice of Proposed Rulemaking* seeks comment on whether to establish a base and/or maximum forfeiture for submitting inaccurate or false information to the RMD, and failing to update information that has changed in the within 10 business days.¹²³ The *Notice of Proposed Rulemaking* also seeks comment on what an appropriate forfeiture would be when a provider submits inaccurate or false information to the RMD, and in what circumstances this forfeiture would apply.¹²⁴ Specifically, we propose to use the current statutory maximum of \$24,496 listed in section 503(b)(2)(D) of the Act as the base forfeiture amount regardless of the type of service provided by the filer for submitting false or inaccurate information to the Robocall Mitigation Database.¹²⁵ Additionally, the *Notice of Proposed Rulemaking* proposes a base forfeiture of \$5,000 for failure to update information within 10 days, and further proposes treating this as a continuing violation for every day the inaccurate information remains in the RMD, up to the statutory maximum of \$183,718.

25. The *Notice of Proposed Rulemaking* proposes to authorize downstream providers to permissively block traffic by RMD filers that have been given notice that their robocall mitigation plans are facially deficient and that fail to correct those deficiencies within 48 hours.¹²⁶ The proposed blocking would occur through a three step process: (1) a notice issued to the provider through the RMD that their robocall mitigation plan is facially deficient because it fails to describe the specific reasonable steps that the provider is taking to avoid carrying and transmitting illegal robocalls; (2) allowing the provider 48-hours to cure this facial deficiency by uploading a robocall mitigation plan that sufficiently describes its mitigation practices; and (3) if it fails to do so, having a flag applied to the facially deficient filing in the RMD advising other providers that they may permissively block traffic from that provider upon providing notice to the Commission that they intend to do so.¹²⁷ The *Notice of Proposed Rulemaking* seeks comment on whether there are additional examples of robocall mitigation plan deficiencies that would rise to the level of willful violations of the Commission's robocall mitigation rules.¹²⁸

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* Section III.A.2.

¹²³ *Id.* Section III.B.1.

¹²⁴ *Id.*

¹²⁵ 47 U.S.C. § 503(b)(2)(D); 47 CFR §1.80(b)(11) tbl. 5.

¹²⁶ *Notice of Proposed Rulemaking* Section III.B.2.

¹²⁷ *Id.*

¹²⁸ *Id.*

26. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Notice of Proposed Rulemaking*. With respect to costs for filing fees, we seek comment on a fee schedule based on the cost of processing applications, with cost determined by the Commission's direct labor costs. We also believe that some proposals, such as the requirement that providers update any information submitted to CORES within 10 business days of any changes to that information, may not impose significant costs on small entities because Commission databases beyond the RMD similarly make use of contact information imported directly from CORES. We seek comment from small and other entities on that perspective.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹²⁹

28. The *Notice of Proposed Rulemaking* seeks comment on proposals and alternatives that may have a significant impact on small entities. In particular, it seeks comment on the benefits and burdens of requiring all entities and individuals that file in CORES, including small entities, to update any information required by the system within 10 business days of any changes.¹³⁰ The *Notice of Proposed Rulemaking* seeks comment on the benefits and burdens associated with various procedural and technical solutions to improve the quality of RMD filings, including: (1) deploying multi-factor authentication functionality for the RMD;¹³¹ (2) requiring an officer to obtain a PIN in order to submit an RMD filing;¹³² and (3) employing a technical approach to RMD data validation, and any alternatives that might mitigate those burdens for RMD filers, including small entities.¹³³ The *Notice of Proposed Rulemaking* also seeks comment on fees for future RMD filings, and seeks comment on whether these fees should be collected from existing filers.

29. In proposing to establish the statutory maximum as the base forfeiture amount for submitting false or inaccurate information to the RMD, the *Notice of Proposed Rulemaking* seeks comment on whether a lower base forfeiture amount would be more appropriate.¹³⁴ Further, it also seeks comment on whether there are particular mitigating factors the Commission should take into consideration when determining the amount of the forfeiture penalty, and proposes to find that the Commission should not impose a higher penalty on common carriers, including those that are small entities.¹³⁵ In proposing to find that the Commission can impose a forfeiture on filers that fail to update information that has changed in the RMD within 10 days, the *Notice of Proposed Rulemaking* seeks comment on whether to establish a base or maximum forfeiture, and whether the violation should be a single violation or continuing violation for each day the non-updated information remains in the RMD,

¹²⁹ 5 U.S.C. § 603(c)(1)-(4).

¹³⁰ *Notice of Proposed Rulemaking* Section III.A.1.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* Section III.A.2.

¹³⁴ *Id.* Section III.B.1.

¹³⁵ *Id.*

which may have a particular impact on small entities.¹³⁶ It also seeks comment on what the maximum forfeiture for a continuing violation should be.¹³⁷

30. In proposing to allow downstream providers to permissively block traffic from providers that have submitted facially deficient robocall mitigation plans, instead of instances where the Commission must make a qualitative judgement, the *Notice of Proposed Rulemaking* seeks comment on the risks and costs to legitimate providers, including small entities, of authorizing permissive blocking, and whether those risks and costs outweigh the public interest benefits.¹³⁸ The *Notice of Proposed Rulemaking* also seeks comment on any alternative that may modify the process to minimize those risks and costs to legitimate providers, including small entities. 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 of Proposed Rulemaking*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

31. None.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* Section III.B.2.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Improving the Effectiveness of the Robocall Mitigation Database*, WC Docket No. 24-213;
Amendment of Part 1 of the Commission's Rules, Concerning the Practice and Procedure,
Amendment of CORES Registration System, MD Docket No. 10-234, Notice of Proposed
Rulemaking (August 7, 2024).

The bad actors behind robocalls are relentless. To stop them, we need to be just as tenacious. That is why today we kick off a rulemaking to make the Robocall Mitigation Database more accurate, effective, and secure.

In the three years since its launch, the Robocall Mitigation Database has become an important tool that helps the Federal Communications Commission and our law enforcement partners keep tabs on carriers and what they are doing to stop junk robocalls. But there is room for improvement. So here we seek comment on ways to make sure filings in the database are up-to-date and authenticated. We also ask about penalties for false and inaccurate information.

This is not the only update we are working on to keep this junk off the line. Just last week, we signed a Memorandum of Understanding with the Department of Treasury's Financial Crimes Enforcement Network so we can get access to Bank Secrecy Act information to track the different business entities that are set up to flood us with unwanted calls and texts. When coupled with the work of the Industry Traceback Group and the 49 State Attorneys General partnering with us, I think we can make real progress stopping the scammers behind these schemes. But to get the job done, we will need Congress to fix the gaping loophole left by the Supreme Court in its decision narrowing the definition of autodialer and reducing consumer protection under the Telephone Consumer Protection Act. We also need to make sure that when this agency issues big fines for illegal robocalls we can take the bad actors responsible to court and not just rely on our colleagues at the Department of Justice to do so.

Thank you to the Robocall Response Team and the staff who worked on this rulemaking, including Erik Beith, Callie Coker, Elizabeth Drogula, Jesse Goodwin, Trent Harkrader, Jodie May, Kiara Ortiz, Zachary Ross, and Lisa Zaina from the Wireline Competition Bureau; David Furth and Jeffrey Goldthorp from the Public Safety and Homeland Security Bureau; Jerusha Burnett and Kristi Thornton from the Consumer and Governmental Affairs Bureau; Loyaan Egal, Alexander Hobbs, Rakesh Patel, Daniel Stepanicich, Kristi Thompson, and Jane van Bente from the Enforcement Bureau; Michele Ellison, Andrea Kelly, Richard Mallen, Erika Olsen, Anjali Singh, Elliot Tarloff, and Derek Yeo from the Office of General Counsel; Chelsea Fallon, Eugene Kiselev, Giulia McHenry, and Steven Rosenberg from the Office of Economics and Analytics; Daniel Daly, Allen Hill, Hua Lu, Tadele Shiferaw, and Mark Stephens from the Office of the Managing Director; Katie Gorscak and Will Wiquist from the Office of Media Relations; Jim Balaguer and Brian Moulton from the Office of Legislative Affairs; and Michael Gussow, Joycelyn James, Chana Wilkerson, and Sanford Williams from the Office of Communications Business Opportunities.

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

In the Matter of	)	
	)	
Park Public Radio, Inc.	)	
	)	
	)	
Minor Change to Low Power FM Station KPPS-	)	Application File No. 142335
LP, St. Louis Park, Minnesota	)	Facility ID No. 196131
	)	
Central Baptist Theological Seminary of	)	
Minneapolis	)	
	)	
Minor Change to FM Translator Station K250BY,	)	Application File No. 142489
Plymouth, Minnesota	)	Facility ID No. 202408
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 5, 2024**Released: August 6, 2024**

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by Park Public Radio, Inc. (Park)¹ and an Opposition thereto filed by Central Baptist Theological Seminary of Minneapolis (Central Baptist).² In the AFR, Park seeks Commission review of a letter decision on reconsideration (*Reconsideration Letter*) issued by the Audio Division, Media Bureau (Bureau), on February 6, 2023.³ The *Reconsideration Letter* upheld a staff letter decision that: (1) dismissed the above-captioned application to modify the facilities of low power FM (LPFM) station KPPS-LP, St. Louis Park, Minnesota (KPPS-LP) filed by Park on March 31, 2021 (Park Modification Application); and (2) granted the above-captioned mutually-exclusive application to modify the facilities of FM translator station K250BY, Plymouth, Minnesota (K250BY), filed by Central Baptist Theological Seminary of

¹ Pleading File No. 212376 (Mar. 10, 2023).

² See Central Baptist's Opposition to Park's Application for Review (Mar. 17, 2023) (Pleading File No. 212664) (Opposition).

³ *Park Public Radio, Inc.*, Letter Decision, Ref. No. 1800B3-DB, Application File Nos. 142489 and 142335 (MB Feb. 6, 2023) (*Reconsideration Letter*). Public Notice of the dismissal of the Park petition for reconsideration was issued on February 8, 2023. See *Pleadings*, Public Notice, Report No. PN-3-230208-01 (MB Feb. 8, 2023). Therefore, the AFR was timely pursuant to 47 CFR 1.115(d) ("the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action").

Minneapolis (Central Baptist) on April 1, 2021 (Central Baptist Modification Application).⁴ For the reasons stated below, we grant the Application for Review, rescind the grant of the Central Baptist Modification Application, and leave the Park Modification Application in dismissed status but permit 30 days to allow Park to file a request for reinstatement *nunc pro tunc*.

II. BACKGROUND

2. On March 31, 2021, Park filed the Park Modification Application, seeking approval for a new channel and transmitter site for KPPS-LP.⁵ In the Engineering Statement attached to the Park Modification Application, Park argued that it was not required to protect LPFM station KQEP-LP, St. Paul, Minnesota (KQEP-LP) because the KQEP-LP license “expires as of 3:00 am April 1, 2021 . . . No license renewal has been filed. No signal from KQEP-LP has been heard in well over a year, and no transmitting antenna could be found at or near the coordinates specified in its license.”⁶ The Park Modification Application also proposed to: (1) retain an existing two-kilometer short-spacing to FM translator station K250BY, Minneapolis, Minnesota (K250BY) while moving KPPS-LP from a second-adjacent to a first-adjacent channel;⁷ and (2) decrease existing short-spacing to FM translator station W248CU, Minneapolis, Minnesota (W248CU) while moving KPPS-LP from a first-adjacent to a second-adjacent channel.⁸ These short-spacings were originally created as a result of modifications to K250BY and W248CU.⁹ Under section 73.807(d), such involuntarily short-spaced LPFM stations may relocate provided that the existing distance separation is not reduced by the move.¹⁰ Park argued that, under section 73.807(d), it should be allowed to relocate and retain its existing “grandfathered” distance separations despite the channel change because it would still be short-spaced by two kilometers before and after the modification; however, it also requested a new waiver “if needed.”¹¹ In a pleading filed in support of its proposal, Park noted that another LPFM applicant, Wimberley Valley Radio (Wimberley), had been previously authorized to retain its short-spacing while changing from a first-adjacent to a second-adjacent channel.¹²

3. By its terms, the KQEP-LP license expired at 3:00 a.m. on April 1, 2021. At 9:46 am that same day, April 1, 2021, Central Baptist filed an application to modify the facilities of FM translator station K250BY (Central Baptist Modification Application).¹³ On April 2, 2021, the Bureau cancelled the

⁴ *Id.* at 1 (upholding *Park Public Radio*, Letter Decision, Ref. No. 1800B3-DB, Application File Nos. 142489 and 142335 (MB July 5, 2022) (*Staff Letter*)).

⁵ Park Modification Application, Application File No. 142335 (filed March 31, 2021).

⁶ Park Modification Application, “Engineering Exhibit” attachment (Engineering Statement) at 1.

⁷ Engineering Statement at 2. Such short-spacings often occur when translators modify their facilities because while translators must avoid prohibited contour overlap with neighboring LPFM stations, they are not required to adhere to the minimum distance separation requirements applicable to LPFM stations. *See generally*, 47 CFR § 74.1204(a) (detailing the contour overlap protection requirements for translator stations).

⁸ Specifically, the W248CU short-spacing would change from 9 km on a first-adjacent channel to 7 km on a second-adjacent channel. Engineering Statement at 2.

⁹ Engineering Statement at 2-3.

¹⁰ 47 CFR § 73.807(d).

¹¹ Engineering Statement at 1-2 (citing 47 CFR § 73.807).

¹² Opposition to petition to deny filed by Park on May 3, 2021 at 5-6 (Pleading File No. 144466) (citing Wimberley Valley Radio (Wimberley), Application File No. 94151 (granted Dec. 30, 2019) (Wimberley Modification Application), *Broadcast Actions*, Public Notice, Report No. PN-2-200102-01 (MB Jan. 2, 2020)).

¹³ Central Baptist Modification Application, Application File No. 142489 (Apr. 1, 2021). The Commission has stated, “[t]he term ‘conflicting’ refers to applications that cannot both be granted without creating impermissible interference. Conflicting applications are ‘mutually exclusive’ or ‘competing’ if they meet applicable criteria (continued....)

KQEP-LP license and deleted its call sign for failure to file a renewal application. Public notice of the cancellation was published on April 7, 2021.¹⁴ On April 12, 2021, Central Baptist filed a petition to deny the Park Modification Application.¹⁵

4. *Staff Letter*. On July 5, 2022, the Bureau issued the *Staff Letter*, dismissing the Park Modification Application and granting the Central Baptist Modification Application.¹⁶ Based on information that Park filed its Application approximately six hours before KQEP-LP's license expired,¹⁷ the *Staff Letter* determined that the Park Modification Application was "prematurely filed."¹⁸ Park's failure to protect the KQEP-LP license at the time of filing, the Bureau concluded, was an acceptability defect that should have resulted in the rejection of the Park Modification Application when it was filed.¹⁹ It explained that allowing such "prematurely filed applications . . . would be unfair to all other similarly-situated prospective applicants for the available spectrum."²⁰ The Bureau further stated that the Central Baptist Modification Application "did not suffer from the same flaw, as it was filed after the KQEP-LP license had expired."²¹ The *Staff Letter* did not analyze whether the KQEP-LP license had expired under section 312(g) of the Communications Act of 1934, as amended (Section 312(g)),²² prior to the filing of the Park Modification Application.

5. On alternative and independent grounds, the Bureau dismissed the Park Modification Application for presenting a "new and impermissible first-adjacent short-spacing to K250BY."²³ The Bureau held that the move was not authorized under section 73.807(d) of the Rules because "there is no grandfathering provision for maintaining an 'existing' short-spacing when changing channels."²⁴ The Bureau also rejected Park's waiver request.²⁵ Finally, the Bureau rejected Park's comparison with the Wimberley Modification Application because: (1) the Wimberley decision was unpublished and thus lacked precedential value; and (2) the facts of the two cases are distinguishable—whereas Wimberley proposed to move to a further frequency (from a first-adjacent to second-adjacent channel), Park proposed

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entitling them to equal priority: mutually exclusive applications cannot be disposed of except by elimination of the mutual exclusivity through technical amendment, settlement between the applicants, auction or other means." 1998 *Biennial Regulatory Review*, First Report and Order, 14 FCC Rcd 5272, 5273, n.2 (1999).

¹⁴ *Broadcast Actions*, Public Notice, Report No. 49962 (April 7, 2021).

¹⁵ Pleading File No. 142335 (Petition to Deny). On May 3, 2021, Park filed an opposition to the Petition to Deny (Opposition) (Pleading File No. 144466). On May 7, 2021, Central Baptist filed a reply to the Opposition (Reply) (Pleading File No. 144799). Additional supplemental pleadings and motions are not relevant to the present discussion and thus not included here.

¹⁶ *Staff Letter* at 2.

¹⁷ *See id.* at 5 ("CBT argues that the PPR Application must be denied or dismissed because, on the date it was filed (9:04 pm on March 31, 2021), it was mutually exclusive with then existing station (KQEP-LP), the license of which expired at 3:00 am on April 1, 2021").

¹⁸ *Id.* at 9, n.69 (citing 47 CFR § 1.934(f), which provides that applications in the Wireless Radio Services may be dismissed without prejudice if they are premature or late filed).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 47 U.S.C. § 312(g).

²³ *Staff Letter* at 10.

²⁴ *Id.* at 10-11 (emphasis added); 47 CFR § 73.807(d).

²⁵ *Staff Letter* at 10-11.

to move to a closer frequency (from a second-adjacent to a first-adjacent channel).²⁶ Therefore, in terms of interference, Wimberley “improved matters” whereas the Park proposal was “problematic.”²⁷

6. *Petition for Reconsideration.* On August 4, 2022, Park filed a petition for reconsideration of the *Staff Letter*, arguing that: (1) the Park and Central Baptist Modification Applications were similarly situated under *Melody Music* in that they were both premature and thus should have been treated similarly with respect to protecting KQEP-LP;²⁸ (2) the Bureau erred by not considering whether the KQEP-LP license had automatically expired under Section 312(g) when Park raised this issue in the Park Modification Application by stating that KQEP-LP “no longer exists” because it “[has] not been heard for well over a year;”²⁹ (3) the Bureau should have “analyzed the similarities and differences” between the Park and Wimberley Modification Applications as “materially analogous situations”;³⁰ and (4) the Bureau incorrectly cited a rule provision applicable only to the Wireless Service.³¹ Park further argues that “citing to non-existent rules and/or ignoring the express terms of applicable rules, as well as due process inherent in *Melody Music*, the Letter Ruling violated the [Administrative Procedure Act (APA)]’s ban on adjudication that is arbitrary and capricious, an abuse of discretion, or not in accord with rules or statutes.”³²

7. *Reconsideration Letter.* On February 6, 2023, the Bureau issued the *Reconsideration Letter*, dismissing in part and otherwise denying Park’s Petition.³³ With regard to protecting KQEP-LP, the Bureau found that the Park and Central Baptist modification applications were not similarly situated because the former was filed before the KQEP-LP license expired at 3 a.m. on April 1, 2021, while the latter was filed afterward.³⁴ In determining the relevant date upon which any conflicting application would have been acceptable for filing, the Bureau applied the policy—set out in the 2014 *Harrisonburg* decision—of accepting conflicting applications for one day after a construction permit has expired.³⁵ Because the Central Baptist Modification Application was filed before a conflicting application would be acceptable under *Harrisonburg* (April 2, 2021), but after the KQEP-LP license expired by its own terms at 3 a.m. on April 1, 2021, the Bureau found that it was not filed prematurely.³⁶ Conversely, the Bureau concluded, the Park Modification Application was filed prior to the KQEP-LP expiration and therefore “should not have been accepted at the time of filing.”³⁷ The Bureau dismissed Park’s Section 312(g) argument for failure to raise the matter earlier “with sufficient clarity.”³⁸ Even “assuming for the sake of

²⁶ *Staff Letter* at 10.

²⁷ *Id.*

²⁸ Pleading File No. 196977 at 2 (Aug. 4, 2022) (citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (*Melody Music*)). Park also argued that the Bureau erred in citing section 1.934(f) of the Rules (a wireless radio service rule) for the proposition that the Commission may dismiss premature applications without prejudice. *Id.* (referring to 47 CFR § 1.934(f)).

²⁹ *Id.* at 7-8 (citing Engineering Statement at 1).

³⁰ *Id.* at 2 (citing *Melody Music*, 345 F.2d at 732-33 (holding that the Commission may not treat similarly-situated licensees differently without an adequate explanation for doing so)).

³¹ *Id.* at 3 (citing 47 CFR § 1.934(f)).

³² *Id.* at 7. The APA is codified at 5 U.S.C. §§ 551-559.

³³ *Reconsideration Letter* at 14.

³⁴ *Id.* at 11.

³⁵ *Id.* (citing *Board of Trustees of Eastern Mennonite University*, Letter Decision, 29 FCC Rcd 5925, 5928 (MB 2014) (*Harrisonburg*)).

³⁶ *Id.*, n.82.

³⁷ *Id.* at 11.

argument” that the Section 312(g) claim had been timely raised, the Bureau found that the additional evidence submitted in Park’s petition for reconsideration did not establish that KQEP-LP had been silent for the requisite consecutive 12-month period prior to April 1, 2021, and that the information submitted by Park did not warrant further investigation into the matter.³⁹

8. Regarding Park’s request to remain short-spaced to K250BY and W248CU while changing channels, the Bureau found that it was not required to consider the unpublished Wimberley Modification Application as binding precedent, and, moreover, the two applications were not similarly situated under *Melody Music* because they proposed different channel relationships.⁴⁰ The Bureau affirmed its denial of the Park waiver request.⁴¹ Finally, the Bureau explained that its dismissal of the Park Modification Application was not arbitrary or capricious under the APA because the *Staff Letter* thoroughly explained its reasoning and the public policy reasons behind its decision.⁴²

9. *Application for Review.* In the Application for Review, Park makes numerous arguments to challenge the Bureau’s dismissal of its Modification Application.⁴³ Park challenges the Bureau’s “premature filing” rationale as a basis for dismissal, arguing that there is no rule that requires dismissal of Park’s Application as premature under the circumstances presented.⁴⁴ Park argues that the Bureau erroneously cited section 1.934(f) of the Rules, which applies only to Wireless Radio Services,⁴⁵ and did not provide any other rule, order, or precedent for dismissal in these circumstances “because such precedent does not exist.”⁴⁶ Rather, according to Park, the Commission’s rules provide that a minor modification application may be filed at any time,⁴⁷ and the Commission has said that it “will not take adverse action on [an application] based solely on its acceptability as filed, when subsequent events prior to staff review resulted in a fully acceptable application.”⁴⁸ In these circumstances, Park concludes, the Bureau’s dismissal of its application was arbitrary and capricious because it was based on a policy that is

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³⁸ *Id.* at 8.

³⁹ *Id.* at 10. This information included a statement by Park’s principal that he had not been able to pick up KQEP-LP’s signal, an email from a building manager at the licensed coordinates that no radio antennas had been installed on the building, and photographs of the relevant buildings. *Id.* The Bureau found that Park’s statement was “unsupported by the record” and “did not warrant additional consideration or further investigation, especially when the parties (and Bureau) understood that the KQEP-LP license expired on April 1, 2021 An investigation under these circumstances would have been a waste of administrative resources.”). *Id.* at 9, n.69.

⁴⁰ *Reconsideration Letter* at 12-13.

⁴¹ *Id.* at 13, n.97.

⁴² *Id.* at 13-14.

⁴³ Park also suggests that Central Baptist could resolve this matter by voluntarily relocating to another channel. *Application for Review* at 13-14.

⁴⁴ *Application for Review* at 5-6.

⁴⁵ See 47 CFR § 1.934(f) (providing that the Commission may dismiss an application in the Wireless Radio Services if “premature or late filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.”).

⁴⁶ *Application for Review* at 5-6; Reply at 4-5.

⁴⁷ *Application for Review* at 6 (referring to 47 CFR § 73.870(e) (“Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered.”)).

⁴⁸ *Application for Review* at 6 (quoting *WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411, 23423, para. 26 (2003) (*Semora*) (granting a modification application that was short-spaced to another station at the time of filing but became grantable prior to processing when the other station downgraded)).

not explicitly stated.⁴⁹ Park also asserts that dismissal was improper because “applications that do not meet all acceptance requirements are normally issued a deficiency letter, and an opportunity to amend its application prior to dismissal.”⁵⁰ Park further argues that *Harrisonburg* is inapplicable here because that decision related to the expiration of an unbuilt modification construction permit in the NCE service, while this proceeding implicates a license renewal for an existing full service station.⁵¹

10. Park submits that although the Bureau concluded that the Park and Central Baptist Modification Applications were both filed prematurely, the Bureau failed to treat them similarly by dismissing Park’s and granting Central Baptist’s.⁵² Park points out that both Modification Applications were filed before the deadline for acceptance of a KQEP renewal application (i.e., April 2, 2021)⁵³ Park contends that, from a public interest standpoint, both applications caused the harm that the Bureau ascribed to the Park Application alone—i.e., precluding subsequent modification applications for the same spectrum and conflicting with any renewal application filed by the KQEP-LP licensee, requiring the comparison of the applications as mutually exclusive, or the dismissal of both.⁵⁴

11. Park argues that even if it did not specifically use the term “312(g)” in the Park Modification Application and related pleadings, it “should have been clear” that it was invoking Section 312(g) when it stated that KQEP-LP was not on the air and had not been for more than a year.⁵⁵ Park also asserts that it subsequently submitted sufficient documentation to at least raise the issue that KQEP’s license had expired as a matter of law and that the Bureau erred in dismissing such documentation as improperly raised on reconsideration.⁵⁶ Park argues that the Bureau should have taken steps to investigate the operating status of KQEP-LP before dismissing the Park Modification Application.⁵⁷

12. Regarding the short-spacing to the two translator stations, Park contends that: (1) section 73.807(d) is explicit with respect to allowable transmitter relocations but does not set out any guidance regarding channel changes for involuntarily short-spaced LPFM stations; (2) that policy considerations and fairness would indicate some flexibility be provided for such applicants; and (3) that the Bureau failed to treat Park similarly to the *Wimberley* applicant, who was permitted to maintain a grandfathered short-spacing while changing to a more “distant” channel.⁵⁸ Park asserts that when an involuntarily short-

⁴⁹ *Id.* at 6.

⁵⁰ Application for Review at 13, n.27 (citing 47 CFR § 73.3522 (“Minor modification of facilities in the non-reserved FM broadcast services . . . shall have the opportunity during the period specified in the FCC staff’s deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application”) and *Family Stations, Inc.*, Memorandum Opinion and Order, 2022 WL 1201895 (2022) (“Under the Commission’s liberal amendment policy [for auctionable services], processing staff should have issued a deficiency letter and afforded Family an opportunity to correct the Translator Application rather than dismiss the application.”)).

⁵¹ Application for Review at 6, n.13; Reply at 5.

⁵² Application for Review at 4-5.

⁵³ *Id.* at 4.

⁵⁴ Application for Review at 2-5, Reply at 9. The parties debate what the effect of KQEP-LP’s time-sharing status may have had on its exact expiration time. Compare Application for Review at 4 (arguing that as a time-share station, KQEP had no authority to operate past 3 pm on March 31, 2021, and therefore was not authorized when the Park Modification Application was filed) with Opposition at 7 (arguing that Park’s time-share argument is without legal basis, unsupported by precedent, and in any case untimely on review). As we determine the acceptability of the applications on other grounds, we need not consider this argument further here.

⁵⁵ Application for Review at 3.

⁵⁶ *Id.* at 7-8.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* at 9-11.

spaced LPFM licensee seeks to change channels, the Commission “should carefully compare the proposal to determine if interference is improved over the licensed facility”⁵⁹ and that “it is only fair that LPFM stations that face pre-existing short-spacing due to the later licensing of an FM translator station be allowed some flexibility in how they can protect those FM translator stations from interference.”⁶⁰ Even if the Wimberley grant cannot be used as precedent, Park urges, it should be given the flexibility to “carry-over short-spacing of a particular station to an adjacent channel, particularly when there is no contour overlap on the new channel.”⁶¹

13. Park states that, after receiving the *Staff Letter*, it obtained site assurance to relocate to a site that would eliminate the objectionable short-spacing to K250BY completely.⁶² However, when, within 30 days of the dismissal, it tried to file a request for reinstatement *nunc pro tunc* (that is, reinstatement in the processing line with the filing date of the original submission) accompanied by a curative amendment, “LMS would not accept an amendment to a dismissed application,” and Bureau staff advised that Park was not permitted to file a *nunc pro tunc* curative amendment because it had previously requested a waiver.⁶³ Park believes that “it is still due the opportunity to file a minor curative amendment . . . [to] eliminate the 2 km short-spacing of the licensed K250BY from a new site, should the K250BY permit be rescinded.”⁶⁴

14. In the Opposition, Central Baptist reiterates the Bureau’s conclusions, contending that all salient issues were correctly decided in the *Reconsideration Letter* and should be affirmed on review.⁶⁵ In particular, Central Baptist points out that the Bureau not only found that it did not have to consider the Wimberley Modification Application as binding precedent but also performed a *Melody Music* analysis and explained the key difference between the two applications with respect to the likelihood of interference.⁶⁶ Central Baptist also urges that allowing a *nunc pro tunc* amendment to correct the spacing defect would be “highly inappropriate” because it would compromise the finality of the “full decision on the merits.”⁶⁷ In sum, Central Baptist argues that the Bureau fully considered the facts before it, applied appropriate precedent, and correctly dismissed the Park Modification Application as procedurally and substantively deficient.⁶⁸

⁵⁹ *Id.* at 10.

⁶⁰ *Id.* at 11.

⁶¹ *Id.*

⁶² *Id.* at 11.

⁶³ *Id.* at 12; Reply at 7-8.

⁶⁴ Application for Review at 12; *see also* Reply at 7-8.

⁶⁵ Specifically, Central Baptist agreed with the Bureau that: “(1) PPR failed to timely raise a 312(g) challenge to KQEP-LP’s license; (2) the Bureau amply justified its decision; (3) the evidence presented by PPR was insufficient to justify its claims; (4) the Bureau was not required to rely on unpublished precedent to grant PPR’s decision; (5) denying PPR the right to amend its dismissed application nearly one year after it was filed was not reversible error; (6) a compromise is not possible and is irrelevant to the issues of this case.” Opposition at iii.

⁶⁶ Opposition at 10-11.

⁶⁷ *Id.* at 11-12.

⁶⁸ *Id.* at 13. On January 22, 2024, Park filed a Request for Leave to File Supplement to Application for Review (Request for Leave) and the Supplement to Application for Review (Supplement) (Pleading File No. 235960), arguing that the Media Bureau released a new letter decision, *Electron Benders*, that introduced “new facts and circumstances” that were pertinent to Park’s Application. *See* Request for Leave at 1 (citing *Electron Benders*, Letter Decision, 2023 WL 8889604, DA 23-1205 (MB Dec. 22, 2023) (*Electron Benders*)). On January 31, 2024, Central Baptist filed an opposition to the Request for Leave (Supplement Opposition) (Pleading File No. 237784). On February 12, 2024, Park filed a reply to the Supplement Opposition (Supplement Reply) (Pleading File No.

(continued....)

15. In its Reply, Park reiterates previous arguments, namely, that: (1) the Bureau misapplied existing rules and precedent when it dismissed the Park Modification Application (specifically contending that *Harrisonburg* is not applicable here but that *Wimberley* is); (2) involuntarily short-spaced LPFM stations should be afforded flexibility to change channels; and (3) there is Bureau-level precedent⁶⁹ for allowing a *nunc pro tunc* amendment after a waiver request.⁷⁰ Park also debates some factual points relating to its Section 312(g) claim, which we do not address further given that we uphold the staff's procedural and administrative reasons for not instigating a factual investigation into Park's Section 312(g) claim.

III. DISCUSSION

16. We grant the Application for Review, rescind the grant of the Central Baptist Modification Application, and leave the Park Modification Application in dismissed status but permit 30 days to allow Park to file a curative amendment and request for reinstatement *nunc pro tunc*. An application for review of a final action taken on delegated authority will be granted when, *inter alia*, such action: conflicts with statute, regulation, precedent or established Commission policy; involves application of a precedent or policy that should be overturned; or makes an erroneous finding as to an important or material factual question.⁷¹ In this case, we find that the dismissal of the Park Modification Application conflicted with established Commission policy regarding the processing of defective minor modification applications.

17. *Protection of KQEP-LP*. Section 73.870(e) references the first-come, first-served

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238807). In the series of "supplemental" pleadings, the parties debate the impact of a published Bureau decision released on December 22, 2023, *Electron Benders*, involving a different matter and different parties, which found that an applicant's failure to correctly certify that it contacted the person possessing control of a proposed transmitter site or to provide contact information for such a person was not a "fatal defect" that could not be cured by subsequent amendment. In the Supplement, Park contends that this decision is "strikingly similar" to the instant case. Supplement at 6. In the Supplement Opposition, Central Baptist argues that *Electron Benders* is not binding precedent and that the Supplement is procedurally unacceptable because the arguments therein could have been made earlier by relying upon Commission precedent that is over 20 years old. See Supplement Opposition at 3-4 (citing *Semora*, 18 FCC Rcd at 23411). Central Baptist also asserts that *Semora* related to a "technical rule" while the instant case relates to "procedural rules." Supplement Opposition at 3-5. In the Supplement Reply, Park argues that the Supplement is timely because it relies on a newly-released case and that the deficient short-spacing in the Park Modification Application is a technical, not a procedural, defect. Supplement Reply at 2. As a threshold matter, we note that Park's Supplement to Application for Review is untimely because it was filed more than 30 days after notice of the action being challenged on review. See 47 CFR 1.115(d). Here, the Bureau's *Reconsideration Letter* was issued on February 6, 2023, and Park's Supplement was not filed until January 22, 2024. We will thus treat Park's Request for Leave as a request for waiver of the filing deadline set forth in 47 CFR § 1.115(d). The Supplement seeks to report on a Bureau decision issued after the deadline for filing Applications for Review in this case. Because the Supplement and related pleadings exclusively relate to a Bureau-level decision that is not binding on the Commission, we find no good cause has been shown warranting further consideration of the Supplement, and thus we deny waiver of the deadline. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (affirming the "well-established view that an agency is not bound by the actions of its staff if the agency has not endorsed those actions") (internal citations omitted). Furthermore, since, as explained herein, we are granting Park relief for reasons independent of the reasoning discussed in Park's Supplement, the Supplement is also moot. For these reasons, we deny Park's Request for Leave and dismiss Park's Supplement.

⁶⁹ Specifically, Park cites to Application File No. BMPL-20171115AAY (allowing an applicant who had previously requested a waiver to seek *nunc pro tunc* reinstatement after dismissal).

⁷⁰ Reply at 1-7.

⁷¹ 47 CFR § 1.115(b)(2).

processing procedures, which our implementing order made clear applies to the low power radio service.⁷² Accordingly, consistent with the text of our rule and implementing order, we apply the Commission's longstanding first-come, first-served processing procedures to minor modifications in the LPFM service.⁷³ Under these procedures, the filing of the first modification application "cuts off" the filing rights of subsequent conflicting applications. At issue here is whether an LPFM modification application that contains a short-spacing defect when originally filed obtains cut-off priority over a later-filed FM translator application. For the reasons set out below, we hold that it does. As a threshold matter, we find that both the Park and Central Baptist Modification Applications were initially defective because neither protected KQEP-LP at the time of filing. When a conflicting application relies on the expiration of an existing station license, it must protect that station's licensed facilities until the Bureau has issued a letter, public notice, or both, affirmatively stating that the license has been cancelled and such order has become final.⁷⁴ Here, the Bureau issued a public notice on April 7, 2021, announcing that the KQEP-LP license had been cancelled and its call sign deleted (*Cancellation Notice*).⁷⁵ The licensee did not seek reconsideration of or otherwise challenge the *Cancellation Notice* within 30 days after publication. Therefore, the *Cancellation Notice* became final after May 17, 2021, 40 days after publication.⁷⁶ For the reasons set out in the *Reconsideration Letter*, we reject Park's contention that the KQEP-LP license had already expired under Section 312(g), namely: (1) Park did not raise the Section 312(g) issue "with sufficient clarity" prior to the *Staff Letter*; (2) the Section 312(g) issue was untimely raised on reconsideration; and (3) the issuance of an LOI would not have been an efficient use of administrative resources, given the imminent license expiration.⁷⁷

18. Moreover, we find that the *Harrisonburg* policy is not applicable here. The one-day filing "window" for allowing mutually exclusive applications applies only to the expiration of construction permits, not licenses.⁷⁸ These two situations are not analogous because license expirations do not implicate the policy concern in *Harrisonburg* that a permittee might attempt to warehouse unused

⁷² See generally, 47 CFR §§ 73.3573(e)-(f), 73.3564(e).

⁷³ See 47 CFR § 73.870(e) ("Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered"); *Creation of a Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, 14494, para. 13 n. 38 ("Amendments proposing new channels will be processed in accordance with established first-come, first-served licensing procedures"). This language reflects the phrasing of 47 CFR § 73.3564(e): "Applications for minor modification of facilities may be tendered at any time, unless restricted by the FCC. These applications will be processed on a 'first come/first served' basis and will be treated as simultaneously tendered if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant." The first-come, first-served processing procedures are set forth in detail in sections 73.3573 and 73.3564. See 47 CFR §§ 73.3573(e)-(f) ("Processing FM broadcast station applications"), 73.3564(e) ("Acceptance of applications").

⁷⁴ See *Atlantic City Board of Education and Press Communications, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384-85, para. 9 (2016) (affirmed on different grounds in *Press Commc'ns v. FCC*, 875 F.3d 1117 (D.C. Cir. 2017) and denied certiorari in 138 S.Ct 1560 (2018)).

⁷⁵ *Broadcast Actions*, Public Notice, Report No. 49962 (April 7, 2021).

⁷⁶ 47 CFR § 1.117(a) (providing the Commission with 40 days to review a Bureau-level action on its own motion).

⁷⁷ *Reconsideration Letter* at 8-9, n.69 (holding that Park's statement regarding KQEP-LP not operating for over a year was "unsupported by the record" and "did not warrant additional consideration or further investigation, especially when the parties (and Bureau) understood that the KQEP-LP license expired on April 1, 2021 . . . An investigation under these circumstances would have been a waste of administrative resources.").

⁷⁸ *Harrisonburg*, 29 FCC Rcd 5925, 5928. In the *Reconsideration Letter*, the Bureau misquoted *Harrisonburg* as applying to the expiration of a "license or construction permit." *Reconsideration Letter* at 11, n.82. In fact *Harrisonburg* referred only to construction permits.

spectrum by immediately filing a replacement construction permit application prior to permit expiration, thus precluding potentially competing applications while not using the spectrum itself. Licensed spectrum, on the other hand, is generally being put to active use serving the public and is thus statutorily protected from competing applications.⁷⁹ In sum, we conclude that the KQEP-LP license was entitled to protection through and including May 17, 2021, after which the *Cancellation Notice* became final because the licensee did not seek reconsideration or otherwise challenge the cancellation. Both the Park and Central Baptist Modification Applications, filed on March 31 and April 1, 2021, respectively, were short-spaced to KQEP-LP at the time of filing and therefore technically deficient.

19. For FM services at issue here, a deficient application is subject to dismissal.⁸⁰ A dismissed application may be reinstated *nunc pro tunc*—that is, as of its original filing date—if the applicant files a minor curative amendment within 30 days of the dismissal.⁸¹ Reinstatement *nunc pro tunc* subjects conflicting applications to the original filing (cut-off) date of the reinstated application.⁸² In both the NCE and commercial services, the Commission will not dismiss an application for a defect present at the time of filing if the defect is eliminated prior to staff action on the application—whether through an amendment to the application, a change in applicable law, or a change in circumstances.⁸³ Not all initial defects are curable—the Commission has identified certain “fatal” defects that may not be

⁷⁹ See 47 U.S.C. § 309(k).

⁸⁰ See 47 CFR § 73.3566.

⁸¹ *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR.2d 776 (1984) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331, 47332 (Dec. 3, 1984)) (*Defective Applications Public Notice*). In the commercial FM service, applicants are not permitted to amend to cure defects after a staff denial of a waiver request. See *Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications*, Report and Order, 7 FCC Rcd 5074, 5078-79, para. 22 (1992) (*Soft Look Order*). This restriction has not been applied to NCE applicants seeking *nunc pro tunc* reinstatement after a dismissal due to denial of a waiver request. For example, LPFM stations are permitted to amend applications that are initially dismissed for submitting a defective waiver request. See *Christian Charities Deliverance Church et al.*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10550, paras. 7-8 (2015) (permitting an applicant to amend *nunc pro tunc* after dismissal due to a deficient waiver request). Moreover, we note that in this case the Bureau did not substantively analyze Park's waiver request but rather concluded that it was statutorily precluded from doing so and thus “dismiss[ed] [Park's] waiver request without further consideration.” See *Staff Letter* at 10-11; *Reconsideration Letter* at 13 n.97.

⁸² *Id.*, 49 Fed. Reg. at 47332; see also *Premier Broadcasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 867, 868 (1992) “grant of the South Coast petition for reconsideration returned its application to ‘pending and undecided’ status *nunc pro tunc* its original file date (July 12, 1985), thereby making the later-filed pending Montecito application ‘inconsistent,’ in violation of 47 C.F.R. § 73.3518.”).

⁸³ See *BVM Helping Hands*, Memorandum Opinion and Order, 29 FCC Rcd 6464, 6465, para. 4 (2014) (holding that the Bureau “properly declined to take adverse action based solely on an application's earlier acceptability, when subsequent events [i.e., a change in applicable law] resulted in an acceptable application at the time of processing”); *Hampton Roads Educational Telecommunications Association, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 14906 (2015) (*Hampton Roads*) (accepting a curative amendment based on changed law and circumstances); *John Joseph McVeigh, Esq.*, Letter Decision, 25 FCC Rcd 3572, 3575 (MB 2010) (technical acceptability issues for an NCE applicant “can be cured while an application is pending or in connection with a timely filed petition for reconsideration. An applicant can amend its proposal or identify changed circumstances that eliminate the rule violation.”); *Semora*, 18 FCC Rcd at 23423, para. 26 (upholding the grant of a full service FM station modification application that failed to protect the licensed facilities of another station at the time of filing but where the short-spacing had been eliminated before staff acted on the application and explaining that “[o]ur broadcast licensing procedures do not require the return of applications that were unacceptable at the time of filing but which came into compliance with our technical rules prior to the deadline for corrective amendments. We will not take adverse action on [an application] based solely on its acceptability as filed, when subsequent events prior to staff review resulted in a fully acceptable application.”).

subsequently cured, such as failure of an NCE applicant to obtain reasonable assurance of site availability.⁸⁴ Here, by the time the staff processed the Park Modification Application on July 5, 2022, the cancellation of the KQEP-LP license was long final, so the short-spacing with respect to KQEP-LP was eliminated prior to staff action on the Applications. Therefore, the Park Modification Application was dismissed in error on this basis. Moreover, even if erroneously dismissed, Park was entitled to consideration *nunc pro tunc*, which was prevented by the newly-implemented LMS licensing database which at the time did not accept petitions for reconsideration or accompanying amendments to dismissed applications.

20. The Commission's policy on defective applications represents a carefully considered balance between avoiding the harshness of strict review⁸⁵ while retaining a sufficiently rigorous review process to encourage complete applications and weed out speculative filings.⁸⁶ When the Commission modified its processing procedures in 1992 to eliminate the previous "hard look" processing standard and allow applicants limited opportunities to amend defective applications, it acknowledged that a consequence of the new procedure would be that "a previously filed defective modification application could, by corrective amendment, prevail over a later filed non-defective applications."⁸⁷ In general, the current approach to processing modification applications, as refined in *Semora*, has worked smoothly and well for many decades.⁸⁸

21. *Protection of K250BY.* For the reasons stated in the *Reconsideration Decision*, we affirm the Bureau's determination that, absent grant of a waiver, an LPFM licensee may not change its channel to a first-adjacent channel while retaining its grandfathered short-spacing, even if it otherwise satisfies the requirements of section 73.807(d).⁸⁹ We agree that this closer spectrum relationship is more likely to create listener interference, a fundamental licensing concern in the LPFM and other services.⁹⁰ For the same reason, we conclude that waiver of the first-adjacent spacing requirements would be inappropriate

⁸⁴ *Los Angeles Social Justice Radio Project*, Memorandum Opinion and Order, 31 FCC Rcd 7506, 7510, para. 7 (2016) (allowing a curative amendment specifying new coordinates for a post-window LPFM amendment and listing examples of fatal defects in LPFM applications, established by specific rule or policy, that cannot be cured by subsequent amendment); *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, 34 FCC Rcd 12519, 12542-43, paras. 57-59 (2019). The D.C. Circuit has held that the Commission must provide "clear and explicit" notice if it wishes to treat a defect as incurable. *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 329 (D.C. Cir. 1994).

⁸⁵ Under the previous "hard look" processing procedures, an applicant was not permitted to amend its application and retain its initial filing priority date. *Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, Report and Order, MM Docket No. 84-750, FCC 85-125 (1985), available at <https://docs.fcc.gov/public/attachments/FCC-85-125A1.pdf> (last visited June 23, 2023) (*Hard Look Order*). Therefore, the first non-defective application filed would be granted. *Processing Procedures for Commercial FM Broadcast Applications*, Notice of Proposed Rulemaking, 6 FCC Rcd 7265, 7268, para. 29 (1991) (*Soft Look NPRM*).

⁸⁶ See *Soft Look Order*, 7 FCC Rcd at 5074, para. 3.

⁸⁷ *Id.* at 5078, para. 19 (quoting comments that "if the Commission intends to permit applicants to correct defects, then it is logical to retain the applicant's place in the processing line.").

⁸⁸ *Semora*, 18 FCC Rcd at 23423, para. 26.

⁸⁹ See *Reconsideration Letter* at 13.

⁹⁰ See, e.g., *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2209, para. 6 (2000) ("We are committed to creating a low power FM radio service only if it does not cause unacceptable interference to existing radio service").

based on the circumstances presented in this case.⁹¹ Deviation from the rule here is not in the public interest because a closer channel relationship is more likely to create listener interference even if the short-spaced distance does not change. Moreover, Park has not shown special circumstances that would justify waiver of the LPFM spacing requirements. In fact, Park argues that LPFM stations generally could benefit from allowing such channel changes.⁹² Therefore, we reject the argument that section 73.807(d) permits an LPFM station to retain grandfathered short-spacing when switching to a closer channel absent grant of a waiver. And, for the reasons set forth above, we deny the request for a waiver of the minimum distance separation requirements.

22. With respect to the Bureau's grant of the Wimberley application, this staff action is not binding on the Commission.⁹³ In addition, as a mere grant of an application without an accompanying explanation of the basis for the decision, the mere grant of the Wimberley application has no precedential value.⁹⁴ On alternative and independent grounds, we agree with the Bureau that Park was not similarly situated to Wimberley with respect to section 73.807(d) because "[Wimberley] moved from a co-channel relationship . . . to a first-adjacent channel relationship (a better channel relationship, in terms of interference) . . . [Park], on the other hand, proposes to move KPPS-LP from a second-adjacent channel short-spacing (on channel 248, 97.5 MHz, a better channel relationship in terms of potential interference between two nearby stations) to a first-adjacent channel short-spacing (on channel 249, 97.7, a worse channel relationship in terms of interference)."⁹⁵ The Bureau clearly explained the factual distinction between the two applications and articulated the underlying policy concern of increased likelihood of interference.⁹⁶ We reject, on the basis that it would substantially undermine the minimum distance separation rule for LPFM stations, Park's argument that a contour overlap showing is sufficient to demonstrate that interference is unlikely. When it created the LPFM service, the Commission considered and determined that the minimum distance separation methodology is the best means to prevent interference in the LPFM service.⁹⁷ Allowing contour overlap showings as an alternative, in the absence of a waiver, would create a considerable and systematic exception to the LPFM spacing rules. For these reasons, we uphold the Bureau's conclusions that the rules do not provide for an LPFM station to move to

⁹¹ The Commission's rules may be waived for good cause shown. 47 CFR § 1.3. When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*). The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate." *WAIT Radio*, 418 F.2d at 1157, para. 2. Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁹² See Application for Review at 9-11.

⁹³ *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008).

⁹⁴ 65 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at Three Transmitter Sites, 10 FCC Rcd 11162, 11175, ¶ 41 (1995) ("unexplained staff actions are not precedent to be followed"); *United States Cellular Operating Co. Compliance with Section 22.942 of the Commission's Rules in the Rockford, IL MSA*, 15 FCC Rcd 4372, 4378, ¶ 10 (2000) (grant of application by Public Notice without explanation did not serve as precedent).

⁹⁵ See *Reconsideration Letter* at 13.

⁹⁶ *Reconsideration Letter* at 13. In *Melody Music*, the Court examined two renewal applications that were considered "at virtually the same time" and raised similar issues, granting one and denying the other without analyzing the differences or similarities between them. *Melody Music*, 345 F. 2d at 732-733. The D.C. Circuit held that the Commission must treat similarly situated applicants similarly or explain the reasoning for differential treatment. *Id.*

⁹⁷ See, e.g., *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2233, para. 7 (2000).

a new, closer channel while preserving its grandfathered short-spacing status absent grant of a waiver and that Park has not justified a waiver here.

23. However, as noted above, Park was entitled to consideration under our *nunc pro tunc* policy, which allows curative amendments within 30 days of the dismissal of a defective application.⁹⁸ We reject Central Baptist's argument that a *nunc pro tunc* amendment would compromise the finality of the staff's decision because the decision granting Central Baptist's application never became final due to the filing of the Petition for Reconsideration and Application for Review.⁹⁹ Because Park attempted to amend to cure the K250BY short-spacing but was prevented from doing so by technical issues with the Commission's filing system, we direct the Bureau to allow Park to file a single amendment to the Park Modification Application within 30 days of the issuance of this order. If, upon staff review, the Park Modification Application is rule-compliant and reinstated *nunc pro tunc*, it will be processed as though it were filed without defect on its original filing date of March 31, 2021. Grant of the Central Baptist Modification Application will be rescinded and returned to "pending" status, so that the two applications are restored to the "first-come, first-served" processing queue.¹⁰⁰

24. We note that applicants choosing to file in anticipation of a future action do so at their own risk. If the future action does not come to pass (due to, for example, a late-filed application to reinstate a license), or if staff reviews the prematurely filed application prior to the future action, then the applicant will be dismissed and, if not able to cure the defect *nunc pro tunc*, will lose their first-in-time filing priority and have to file a new application. For these reasons, we encourage applicants to carefully evaluate such risks prior to submitting applications that are defective at the time of filing.

25. *Conclusion.* For the foregoing reasons, we find that the Bureau, in the *Reconsideration Letter*, did not correctly apply established Commission policy regarding the filing of defective minor modification applications. Therefore, we grant the Application for Review, rescind the grant of the Central Baptist Modification Application, and leave the Park Modification Application in dismissed status but permit 30 days to allow Park to file a petition for reconsideration accompanied by an appropriate curative amendment.¹⁰¹

IV. ORDERING CLAUSES

26. IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁰² and Section 1.115(g) of the Commission's Rules,¹⁰³ the Application for Review filed by Park Public Radio, Inc. on March 10, 2023 (Pleading File No. 212376) IS GRANTED.

⁹⁸ Although the issue of Park's inability to file an amendment was raised for the first time in the Application for Review, we find that the public interest is served by consideration of this issue and therefore waive 47 CFR § 1.115(c) on our own motion. See *Beasley Broadcast Group Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15949, n.37 (2008). See also 47 U.S.C. § 155(c)(4) (providing for Commission review on its own initiative). After careful review of the history of this proceeding, we conclude that Park was entitled to—and as a matter of factual record attempted to obtain earlier in the proceeding—*nunc pro tunc* treatment.

⁹⁹ Opposition at 11-12.

¹⁰⁰ In light of our actions taken herein, we direct the Bureau, when it processes the Park Application, to review and consider all remaining issues going to technical or legal grantability, including any matters that were raised in the initial Petition to Deny.

¹⁰¹ See 47 U.S.C. § 312(g). Because we grant the Application for Review on grounds that the Bureau did not correctly apply Commission policy regarding the filing of defective minor modification applications, we do not address Park's other arguments that there is no rule providing for the dismissal of minor change applications filed prematurely or that a compromise could be reached with Central Baptist.

¹⁰² 47 U.S.C. § 155(c)(5).

¹⁰³ 47 CFR § 1.115(g).

27. IT IS FURTHER ORDERED that, pursuant to Section 5(c)(6) of the Communications Act of 1934, as amended, and Section 1.115(h)(1)(iii) of the Commission's Rules, the application for a minor change to LPFM station KPPS-LP, St. Louis Park, Minnesota, filed by Park Public Radio, Inc. on March 31, 2021 (Application File No. 142335), may be amended in accordance with the Commission's *nunc pro tunc* policy until September 5, 2024, at which time it will be assessed for compliance with the Commission's rules and disposed of accordingly.

28. IT IS FURTHER ORDERED that, pursuant to Section 5(c)(6) of the Communications Act of 1934, as amended,¹⁰⁴ and Section 1.115(h)(1)(i) of the Commission's Rules,¹⁰⁵ the grant of the application for a minor change to FM translator station K250BY, Plymouth, Minnesota, filed by Central Baptist Theological Seminary of Minneapolis on April 1, 2021, (Application File No. 142489) IS RESCINDED and the application RETURNED TO PENDING STATUS.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁴ 47 U.S.C. § 155(c)(6).

¹⁰⁵ 47 CFR § 1.115(h)(1)(i).