Volume 39, No. 12, Pages 10289 to 11279,
September 7 – October 7, 2024

FCC Record

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FCC Record

Volume 39, No. 12, Pages 10289 to 11279, September 7 – October 7, 2024

FEDERAL COMMUNICATIONS COMMISSION

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Anna M. Gomez

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Federal Communications Commission Record

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

In the Matter of	)	
	)	
T-Mobile US, Inc.	)	File Nos.: EB-TCD-21-00032661;
	)	EB-TCD-23-00034726;
	)	EB-TCD-23-00035152;
	)	EB-TCD-23-00035233
	)	CD Acct. No.: 202432170007
	)	FRN: 0014194476

ORDER

Adopted: September 27, 2024 **Released: September 30, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree resolving the Bureau's investigations into whether T-Mobile US, Inc. (T-Mobile or Company): (i) failed to meet its duty to protect the confidentiality of customer proprietary information (PI); (ii) impermissibly used, disclosed, or permitted access to individually identifiable customer proprietary network information (CPNI) without customer approval; (iii) failed to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI; (iv) engaged in unjust and unreasonable information security practices; and (v) made misrepresentations to its customers regarding its information security practices.

2. The Communications Act of 1934, as amended (the Act), and the Commission's rules impose various duties on telecommunications carriers. These duties include specific requirements that carriers protect customer information as well as proprietary information of other carriers,[1] and an overarching obligation that carriers' practices be "just and reasonable."[2] The Commission has made clear that it expects telecommunications carriers to take "every reasonable precaution" to protect their customers' proprietary or personal information.[3] The Commission has also explained that the statutory obligation to employ "just and reasonable" practices extends to carriers' information security practices.[4]

3. T-Mobile suffered data breaches in 2021, 2022, and 2023. Combined, these breaches affected millions of current, former, or prospective T-Mobile customers and millions of end-user customers of T-Mobile wireless service resellers, which operate on T-Mobile's network infrastructure and are known as mobile virtual network operators (MVNOs). The customer information exposed in these incidents included PI (such customers' names, addresses, dates of birth, Social Security numbers, and driver's license numbers) and CPNI (such as the features customers subscribed to and the number of lines their accounts).

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[1] *See* 47 U.S.C. § 222; 47 CFR § 64.2001 *et seq*.

[2] 47 U.S.C. § 201(b).

[3] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959, para. 64, n.198 (2007) (citing 47 U.S.C. § 222(a)).

[4] *See TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325, 13335-37, paras. 31-35 (2014), *consent decree adopted*, *TerraCom, Inc. and YourTel America, Inc*, Order, 30 FCC Rcd 7075 (2015) (reaching settlement in which companies paid civil penalty of $3.5 million).

4. The failure to protect the confidentiality of customers' PI and the PI of other carriers violates a carrier's statutory duty under the Act[5] to protect that information. Moreover, impermissibly using, disclosing, or permitting access to individually identifiable CPNI without customer approval and failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI violate a carrier's statutory duty under the Act and the requirements of the Commission's CPNI rules, respectively.[6] These failures also constitute an unjust and unreasonable practice in violation of the Act, as do misrepresentations regarding a carrier's information security practices.[7]

5. To settle these investigations, T-Mobile will pay a civil penalty of $15,750,000 and commit to spending an additional $15,750,000 over the next two years to strengthen its cybersecurity program, and develop and implement a compliance plan to protect consumers against similar data breaches in the future. Specifically, T-Mobile will be required to improve its privacy, data security, and cybersecurity practices by, among other things:

(i) **Corporate Governance:** designating a Chief Information Security Officer who will report regularly to the Board of Directors on cybersecurity matters;

(ii) **Modern Zero-Trust Architecture:** moving towards a "zero trust" security framework and segmenting its network to limit the blast radius when a breach occurs;

(iii) **Identity and Access Management:** implementing phishing-resistant multifactor authentication (MFA) to secure its networks and systems;

(iv) **Data Minimization and Deletion:** adopting data minimization, data inventory, and data disposal processes designed to limit its collection and retention of customer information;

(v) **Critical Asset Inventory:** identifying and promptly tracking critical assets on its network to prevent misuse or compromise; and

(vi) **Independent Third Party Assessments:** conducting independent third-party assessments of its information security practices.

6. Implementing these practices will require significant—and long overdue—investments. To do so at T-Mobile's scale will likely require expenditures an order of magnitude greater than the civil penalty here. The Commission will hold T-Mobile accountable for making these mandatory changes to comply with statutory and regulatory obligations going forward and to ensure that T-Mobile does not create unnecessary cybersecurity risk for others through its business practices (e.g., mergers and acquisitions and facilities-based services for MVNOs).[8] When organizations that have data on individuals fail to act as responsible stewards for this data, they externalize the costs onto everyday Americans.[9] By compelling T-Mobile to make these changes to its business practices, the Commission supports a whole-

[5] 47 U.S.C. § 222(a).

[6] *Id.* § 222(c); 47 CFR § 64.2010(a).

[7] 47 U.S.C. § 201(b).

[8] For example, T-Mobile discloses that it "acquired and continue[s] to acquire companies with cybersecurity vulnerabilities or unsophisticated security measures, which exposes [T-Mobile] to significant cybersecurity, operational, and financial risks." Sec. & Exch. Comm'n, Form 10-K filed by T-Mobile US, Inc. (Feb. 2, 2024), https://www.sec.gov/Archives/edgar/data/1283699/000128369924000008/tmus-20231231.htm. T-Mobile does not bear these cybersecurity risks alone but may also expose its customers and other carriers to unnecessary risks through such acquisitions.

[9] White House, *National Cybersecurity Strategy* (Mar. 2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf ("When organizations that have data on individuals fail to act as responsible stewards for this data, they externalize the costs onto everyday Americans.").

of-government strategy to shift the consequences of poor cybersecurity away from the consumers who entrust their sensitive data with telecom service providers.[10]

7. 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 investigations regarding T-Mobile's compliance with sections 201(b) and 222 of the Act, and section 64.2010(a) of the Commission's CPNI rules.

8. In the absence of material new evidence relating to these matters, we do not set for hearing the question of T-Mobile's basic qualifications to hold or obtain a Commission license or authorization.

9. 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.

10. **IT IS FURTHER ORDERED** that the above-captioned matters **ARE TERMINATED**.

11. **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 Edward Smith, Senior Vice President for Government Affairs, T-Mobile, 601 Pennsylvania Ave. NW, Suite 800, Washington, DC 20004; Christopher Koegel, Director, Federal Regulatory Affairs, T-Mobile, 601 Pennsylvania Ave. NW, Suite 800, Washington, DC 20004; and Megan L. Brown, Partner, Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[10] *See id.* at 19. ("We will shift the consequences of poor cybersecurity away from the most vulnerable, making our digital ecosystem more worthy of trust.")

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

In the Matter of	)	
	)	File Nos.: EB-TCD-21-00032661;
T-Mobile US, Inc.	)	EB-TCD-23-00034726;
	)	EB-TCD-23-00035152;
	)	EB-TCD-23-00035233
	)	CD Acct. No.: 202432170007
	)	FRN: 0014194476

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and T-Mobile US, Inc. (T-Mobile or Company), by their authorized representatives, hereby enter into this Consent Decree to resolve the Bureau's investigation into whether T-Mobile violated sections 201(b) and 222 of the Communications Act of 1934, as amended (Communications Act or Act),[1] and section 64.2010(a) of the Commission's Rules[2] in connection with multiple data breach incidents in 2021, 2022, and 2023. To resolve this matter, T-Mobile agrees to implement a comprehensive security program and pay a civil penalty in the amount of $15,750,000, with an additional $15,750,000 in cybersecurity spending over the next two years to further strengthen its cybersecurity program.

I. DEFINITIONS

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

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

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

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

(d) "CD Acct No." means account number 202432170007, associated with payment obligations described in Paragraph 45 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 T-Mobile is subject by virtue of its business activities, including but not limited to the CPNI Rules.

(g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph36(a).

(h) "Compensating Control" means a mechanism that can be put in place as an alternative to satisfying a cybersecurity measure, where the cybersecurity measure is determined to be impractical or unreasonable to implement due to technical, business, or other constraints. Such alternative mechanism must (a) meet the intent

[1] *See* 47 U.S.C. §§ 201, 222.

[2] *See* 47 CFR § 64.2010(a).

[3] 47 U.S.C. § 151 *et seq.*

and rigor of the original stated requirement; (b) provide a similar level of security as the original stated requirement; (c) be consistent with industry accepted security protocols; and (d) be commensurate with the additional risk imposed by not adhering to the original stated requirement. Compensating Controls shall be reevaluated for security effectiveness not less than annually to determine whether to retain the Compensating Control as an appropriate security measure.

(i) "Consumer" means a natural person whose Covered Information is in T-Mobile's possession as the result of a prior, ongoing, or prospective purchase of goods or services from T-Mobile.

(j) "Covered Incident" means any cybersecurity incident for which T-Mobile is required to notify, pursuant to a statutory or regulatory requirement, any United States federal, state, or local governmental entity that Covered Information was, or is Reasonably believed to have been, without authorization or exceeding authorization, accessed, acquired, used, or disclosed.

(k) "Covered Individuals" means all persons who, on behalf of T-Mobile, have authorized access to Covered Information on the T-Mobile Network pursuant to T-Mobile system credentials.

(l) "Covered Information" means CPNI. Covered Information shall not include CPNI that has been aggregated, anonymized, masked, or tokenized.[4]

(m) "Covered Third Party" means any third party that accesses, collects, processes, or stores Covered Information on behalf of T-Mobile, pursuant to a contractual agreement with T-Mobile. "Covered Third Party" shall not include: (1) any third party that only accesses, collects, or stores de minimis amounts of Consumer Covered Information on behalf of T-Mobile; and (2) third-party dealers, which, for purposes of this Consent Decree, refers to third parties that sell T-Mobile products and services pursuant to a contractual relationship with T-Mobile, that are not wholly owned or wholly controlled by T-Mobile.

(n) "CPNI Rules" means 47 CFR §§ 64.2001 – 64.2011.

(o) "Critical Assets" means all assets within the T-Mobile Network deemed most critical to T-Mobile's ongoing business and/or operational functions. "Critical Assets" shall not include customer-owned or -managed equipment.

(p) "Customer Proprietary Network Information" or "CPNI" shall have the meaning set forth at 47 U.S.C. § 222(h).

(q) "Effective Date" means the date by which both the Bureau and T-Mobile have signed the Consent Decree and the Bureau has released an Adopting Order.

(r) "Encrypt," "Encrypted," or "Encryption" means rendering data unreadable or indecipherable using an algorithm commensurate with the sensitivity of the data at issue.

(s) "Investigations" shall mean the Federal Communications Commission Enforcement Bureau investigations with case file numbers EB-TCD-21-00032661, EB-TCD-23-00034726, EB-TCD-23-00035152, and EB-TCD-23-00035233.

[4] For the purposes of this Consent Decree, Covered Information does not include information about an individual that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(t) "Operating Procedures" means the standard internal operating procedures and compliance policies established by T-Mobile to implement the Compliance Plan.

(u) "Parties" means T-Mobile and the Bureau, each of which is a "Party."

(v) "Reasonable," "Reasonably," "Reasonableness" shall mean a level of care or effort that is commensurate with industry norms or, as applicable, a Risk Assessment, both in terms of quality and scope of effort, as well as the timing of performance.

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

(x) "T-Mobile" means, subject to the exceptions below, T-Mobile US, Inc., and any successor-in-interest, affiliate, wholly or partially owned subsidiary, and all respective directors and officers acting in their official capacities. "T-Mobile" shall not include: (1) any affiliates or subsidiaries whose networks are not integrated; and (2) Secure Federal Operations.

(y) "T-Mobile Network" means, subject to the exclusions stated herein, all networking equipment, databases or data stores, applications, servers, and endpoints that: (1) are capable of using and sharing software, data, and hardware resources; (2) are owned, operated, or controlled by T-Mobile in support of its business operations; and (3) collect, process, or store Covered Information. "T-Mobile Network" does not include: any portions of T-Mobile's network that supports wireless or internet-based communications services, data services, or commercial fiber services. "T-Mobile Network" also does not include networking equipment, databases or data stores, applications, servers, and endpoints to the extent they support the operations, administration, and maintenance of the underlying portions of T-Mobile's network that provide the services discussed in this Paragraph.

II. BACKGROUND

A. Legal Framework

3. The Act and the Commission's rules impose various duties on telecommunications carriers. These duties include specific requirements that carriers protect certain customer information and an obligation that carriers' practices be "just and reasonable."[5]

4. Section 222(c) of the Act, entitled "Confidentiality of Customer Proprietary Network Information," restricts carriers' use and disclosure of CPNI, which includes both: (a) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (b) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier (other than subscriber list information).[6] Section 222(c)(1) only permits a carrier to disclose, permit access to, or use a customer's individually identifiable CPNI to provide telecommunications services, or other services "necessary to, or used in," the carrier's telecommunications service, unless otherwise authorized by the customer or required by law.[7] The Commission has adopted rules implementing Section 222(c)'s protections of CPNI.

[5] 47 U.S.C. § 201(b).

[6] *See id.* §§ 222(c), 222(h)(1).

[7] *Id.* § 222(c)(1).

5. The Commission has issued regulations implementing the requirements of section 222 and has amended those rules over time. In the *2007 CPNI Order*,[8] the Commission amended its Rules relating to CPNI. Section 64.2010(a) of the Commission's Rules requires that "carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."[9] What constitutes a reasonable practice is highly fact-dependent. The Commission expects carriers to employ effective protections of customer data in their own systems.

6. Section 222(a) of the Act states that every telecommunications carrier "has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers . . . and customers."[10]

7. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful."[11] The Commission has interpreted section 201(b) to apply to carriers' practices for protecting CPNI against unauthorized access, use, or disclosure.[12]

B. Factual Background

8. T-Mobile is a telecommunications carrier that provides wireless communications services to 119.7 million post-paid and prepaid customers throughout the United States. T-Mobile is incorporated in Delaware and has its principal office in Bellevue, Washington.

1. Cybersecurity Incidents

9. T-Mobile suffered cybersecurity incidents in 2021, 2022, and 2023 as a result of the criminal acts of third parties. These breaches were varied in their nature, exploitations, and apparent methods of attack. The Bureau and T-Mobile disagree about whether T-Mobile's network and data security program and policies in place at the relevant times violated any standard of care or regulation then applicable to T-Mobile, but in the interest of resolving these investigations, and in the interest of putting consumer security first, the parties enter into this negotiated consent decree.

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[8] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (2007 CPNI Order).

[9] 47 CFR § 64.2010(a).

[10] 47 U.S.C. § 222(a); *see also In the Matter of T-Mobile USA*, Inc., File No.: EB-TCD-18-00027702, NAL/Acct. No.: 202032170003, FRN: 0006945950, Forfeiture Order (Apr. 29, 2024) ("Section 222(a) of the Act imposes a general duty on telecommunications carriers to "protect the confidentiality of proprietary information" of "customers."). This assertion about the reach and meaning of Section 222(a) is presently subject to challenge in multiple court proceedings. *See e.g., AT&T v. FCC*, No. 24-60223 (5th Cir. filed May 5, 2024) (petition for review pending); *Texas Association of Business v. FCC*, *et. al*, No. 24-3206 (6th Cir. filed Mar. 8, 2024) (disputing *Data Breach Reporting Requirements*, WC Docket No. 22-21, Report and Order, FCC 23-111 (rel. Dec. 21, 2023)).

[11] 47 U.S.C. § 201(b).

[12] *See, e.g.*, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information et al.*, Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, para. 15 (1998) ("Based on the Act's grant of jurisdiction, the Commission has historically regulated the use and protection of CPNI by AT&T, the BOCs, and GTE, through the rules established in the Computer III proceedings. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act.").

a. 2021 Incident

10. On August 12, 2021, T-Mobile became aware of a potential attack on its systems and launched an internal investigation.[13] T-Mobile confirmed on August 15, 2021, that it had suffered a cyber attack and hired an outside vendor to conduct a forensic investigation.[14] On August 16, 2021, T-Mobile made a public announcement on its website regarding the 2021 incident,[15] followed by additional public announcements on August 17 and 20,[16] and a blog post on August 27.[17]

11. In the 2021 Incident, a criminal hacker accessed T-Mobile's network and customer data. Specifically, in 2021, a threat actor was able to gain access to a T-Mobile lab environment via a piece of telecommunications equipment by impersonating a legitimate connection to the piece of equipment. Prior to achieving this access, the threat actor appears to have engaged in reconnaissance over a period of months. The threat actor was able to exploit this initial access and successfully guess passwords for certain servers, and then moved across network environments. As a result, the threat actor was able to access another lab environment, in which the threat actor engaged in additional network scanning and password-spraying attacks. This enabled the threat actor to access other environments containing database backup files and other information. Forensic review confirmed the threat actor was able to exfiltrate data from these environments including a limited amount of CPNI.

12. In terms of data impacted, the threat actor accessed information including: (a) first and last names, addresses, dates of birth, Social Security numbers, and driver's license numbers of 7.8 million current T-Mobile customers and approximately 40 million former, and prospective customers.[18] The threat actor accessed the names, dates of birth, and ID numbers of an additional 1.9 million former and prospective customers; and names, dates of birth, and in many cases addresses of 6.1 million former and prospective customers. The threat actor also accessed, for some customers, device identifiers and account PINs. T-Mobile confirmed that no customer financial information such as credit card or debit card information was exposed in the 2021 Incident. For purposes of its class action settlement of the 2021 Incident, the number of impacted consumers was 76.6 million, of which only a very small portion had CPNI impacted.

13. T-Mobile detected the 2021 Incident in August 2021.[19] From August 15, 2021, through October 8, 2021, T-Mobile implemented various measures to cut off the intruder's access to T-Mobile's systems.[20] Thereafter, T-Mobile took a number of actions to minimize the impact of the incident and protect consumers.[21] The last evidence of intruder activity was on August 13, 2021.

14. In addition to various immediate containment actions taken (rotating network passwords, implementing additional firewall rules, disconnecting equipment) to shut down threat actor access, T-

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[13] Response to Initial Letter of Inquiry, from T-Mobile, USA, Inc. to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 12-13 (Nov. 12, 2021) (on file in EB-TCD-21-00032661) (Nov. 2021 LOI Response).

[14] Nov. 2021 LOI Response at 13.

[15] T-Mobile, *T-Mobile Cybersecurity Incident Update* (Aug. 16, 2021), https://www.t-mobile.com/news/network/cybersecurity-incident-update-august-2021.

[16] T-Mobile, *T-Mobile Shares Updated Information Regarding Ongoing Investigation into Cyberattack* (Aug. 17, 2021), https://www.t-mobile.com/news/network/additional-information-regarding-2021-cyberattack-investigation.

[17] Mike Sievert, *The Cyberattack Against T-Mobile and Our Customers: What Happened, and What We Are Doing About It*, T-Mobile (Aug. 27, 2021), https://www.t-mobile.com/news/network/cyberattack-against-tmobile-and-our-customers.

[18] Nov. 2021 LOI Response at 32, 34.

[19] *Id.* at 12.

[20] *Id.* at 19.

[21] *Id.* at 30-31.

Mobile took steps intended to mitigate potential harm to consumers, including making identity theft protection available to "all individuals" regardless whether they were ever a T-Mobile customer,[22] directing customers to tools offered by T-Mobile that customers could use to protect themselves,[23] and taking steps to minimize unauthorized SIM swaps following the breach.[24] Finally, the Company created a dedicated webpage linking to the various available tools, as well as to FTC and state attorney-general websites.[25] T-Mobile has not identified any fraudulent activity that relates to data compromised in the 2021 Incident.[26]

15. In addition to the containment steps taken and consumer protections made available, T-Mobile engaged forensic experts to help it evaluate the incident and it engaged global leaders in cybersecurity risk management to help the company assess its overall posture and develop a multi-year plan to elevate cybersecurity planning, defenses and strategies. That program remains ongoing and T-Mobile has kept the Bureau informed.[27]

16. T-Mobile contacted Bureau staff regarding the incident on August 16, 2021, and participated in an initial call on August 17. T-Mobile filed a report in the CPNI Data Breach Reporting Portal on August 24, 2021.[28] The Bureau began its investigation based on (1) initial talks with the Company, (2) publicly available information posted on T-Mobile's website, and (3) the report submitted by T-Mobile to the CPNI Data Breach Portal.

17. The Bureau sent T-Mobile a letter of Inquiry on August 27, 2021,[29] followed by supplemental letters of inquiry on April 5, 2022;[30] July 8, 2022;[31] and September 16, 2022.[32] T-Mobile responded to each letter of inquiry.[33]

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[22] *Id.* at 40.

[23] *See id.* at 40-41. These tools included Scam Shield (meant to protect customers from scammers and robocalls) and Account Takeover Protection (which added additional security to a customer's account).

[24] *See* Nov. 2021 LOI Response at 40-41, 43-44.

[25] *See* Nov. 2021 LOI Response at 40; T-Mobile, *Online Safety: Resources for identity theft and internet fraud prevention*, https://www.t-mobile.com/privacy-center/education-and-resources/online-safety#moduleSteps (last visited Sept. 27, 2022).

[26] Nov. 2021 LOI Response at 42-43.

[27] *Id.* at 13-14.

[28] *See* T-Mobile CPNI Breach Report, Reference Number 2021-7560 (Aug. 24, 2021) (on file in EB-TCD-21-32661).

[29] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Aug. 27, 2021) (on file in EB-TCD-21-00032661) (Initial LOI).

[30] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Apr. 5, 2022) (on file in EB-TCD-21-00032661).

[31] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (July 8, 2022) (on file in EB-TCD-21-00032661).

[32] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Sept. 16, 2022) (on file in EB-TCD-21-00032661).

[33] *See, e.g.*, Nov. 2021 LOI Response; Response to First Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (June 6, 2022) (on file in EB-TCD-21-00032661); Response to Second Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 6, 2022) (on file in EB-TCD-21-00032661); Response to Third Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 10, 2022) (on file in EB-TCD-21-00032661); Response to Third Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 31, 2022) (on file in EB-TCD-21-

(continued….)

b. Platform Access Incident

18. In late 2022, a threat actor gained unauthorized access to a management platform that T-Mobile provides to its mobile virtual network operator ("MVNO") resellers to enable the MVNO resellers to provision services to their end-user customers. That platform contains MVNOs' customers' information.

19. Unauthorized access to the platform appears to have involved a few different tactics, including an illegal SIM swap of a T-Mobile employee, a phishing attack on another T-Mobile employee, and at least one compromise of unknown origin.

20. The Bureau learned of the incident on January 10, 2023, when one of the MVNOs that was affected submitted a report to the CPNI Breach Reporting Portal. After investigating the incident, on February 6, 2023, T-Mobile submitted a report via the CPNI Breach Reporting Portal.[34] The Bureau issued a letter of inquiry to T-Mobile on April 24, 2023,[35] to which T-Mobile responded on July 17, 2023.[36] The Bureau issued a supplemental letter of inquiry to T-Mobile on November 30, 2023;[37] T-Mobile submitted its response on March 8, 2024.[38] T-Mobile has been cooperating with the Bureau's investigation of this incident.

c. Sales Application Incident.

21. In early 2023, a threat actor used stolen T-Mobile account credentials to access a frontline sales application for which remote access had been enabled to maintain operations during the COVID-19 pandemic and view certain customer data, including a limited amount of CPNI.

22. T-Mobile became aware of the breach in late February 2023, when the Company noticed an increase in customer port-out complaints.[39] The Company launched an investigation that, on or about March 30, 2023, revealed that a threat actor had obtained the account credentials for several dozen T-Mobile retail employees.[40] T-Mobile believes that the threat actor obtained those credentials through a targeted phishing campaign.[41]

00032661); Response to Follow Up Questions to the Third Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Nov. 22, 2022) (on file in EB-TCD-21-00032661).

[34] CPNI Data Breach Reporting Portal Report No. 2023-731 (on file in EB-TCD-23-00035152).

[35] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Apr. 24, 2023) (on file in EB-TCD-23-00035152).

[36] *See* Response to Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jul. 17, 2023) (on file in EB-TCD-23-00035152).

[37] Supplemental Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Nov. 30, 2023) (on file in EB-TCD-23-00035152).

[38] *See* Response to Supplemental Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 8, 2024) (on file in EB-TCD-23-00035152).

[39] Response to Letter of Inquiry, from T-Mobile, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 31, 2023) (on file in EB-TCD-23-00035233) (Aug. 2023 LOI Response).

[40] *Id.* at 5.

[41] *Id.* at 2.

23. T-Mobile filed a report in the CPNI Data Breach Reporting Portal on April 11, 2023.[42] The Bureau issued a Letter of Inquiry on May 24, 2023.[43] T-Mobile submitted its response on August 31, 2023.[44]

d. Application Programming Interface (API) Incident.

24. In early January 2023, T-Mobile discovered a data breach involving one of the Company's APIs.[45] Human error led to a misconfiguration in permissions settings that allowed a threat actor to submit queries and obtain T-Mobile customer account data. The API was able to access a limited set of certain customer account data, including name, billing address, email, phone number, date of birth, T-Mobile account number, and information such as the number of lines on the account and plan features.[46] T-Mobile's investigation indicated that the threat actor obtained data from this API for approximately 37 million current postpaid and prepaid customer accounts, though many of these accounts did not include the full data set.[47]

25. T-Mobile reported the breach to the Commission on January 13, 2023, via the CPNI Data Breach Reporting Portal.[48] On January 19, 2023, T-Mobile filed a Form 8-K report with the Securities and Exchange Commission disclosing the breach.[49] The Bureau sent a letter of inquiry to T-Mobile on January 25, 2023,[50] to which T-Mobile responded on March 31, 2023.[51] The Bureau sent a supplemental letter of inquiry to T-Mobile on August 21, 2023,[52] to which T-Mobile responded on October 20, 2023.[53]

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[42] CPNI Data Breach Reporting Portal Report No. 2023-2362 (on file in EB-TCD-23-00035233).

[43] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (May 24, 2023) (on file in EB-TCD-23-00035233).

[44] *See* Aug. 2023 LOI Response.

[45] An API is "a set of software instructions and standards that allows machine to machine communication—like when a website uses a widget to share a link on Twitter or Facebook." Gray Brooks, Gen. Services Admin., *What are APIs?* (Apr. 30, 2013), https://digital.gov/2013/04/30/apis-in-government/. *See* Nat'l Inst. of Standards and Tech., *Application Programming Interface (API)*, https://csrc.nist.gov/glossary/term/application_programming_interface (last visited May 29, 2024) ("A system access point or library function that has a well-defined syntax and is accessible from application programs or user code to provide well-defined functionality.").

[46] *See* Response to Letter of Inquiry, from T-Mobile USA, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau at 23-24 (Mar. 31, 2023) (on file in EB-TCD-23-00034726) (Mar. 2023 LOI Response).

[47] *See* Response to Supplemental Letter of Inquiry, from T-Mobile USA, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau at 10 (Oct. 20, 2023) (on file in EB-TCD-23-00034726) (Oct. 2023 Supplemental LOI Response).

[48] CPNI Data Breach Reporting Portal Report No. 2023-247 (on file in EB-TCD-23-00034726).

[49] *See* T-Mobile US, Inc., SEC Form 8-K (Jan. 19, 2023), https://www.sec.gov/Archives/edgar/data/1283699/000119312523010949/d641142d8k.htm.

[50] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Jan. 25, 2023) (on file in EB-TCD-23-00034726).

[51] *See* Mar. 2023 LOI Response.

[52] *See* Supplemental Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to T-Mobile US, Inc. (Aug. 21, 2023) (on file in EB-TCD-23-00034726).

[53] *See* Oct. 2023 Supplemental LOI Response.

2. T-Mobile's Cybersecurity Program

26. T-Mobile has spent significant additional resources voluntarily enhancing its security program since 2021, engaging internal and outside experts to further enhance controls and processes.[54]

27. T-Mobile has made major financial and operational commitments in the course of its cybersecurity transformation and in response to FCC oversight. It has publicly committed to a multi-year investment working with leading external cybersecurity experts to enhance cybersecurity capabilities and transform its approach to cybersecurity.

28. T-Mobile has implemented processes for overseeing and identifying material risks from cybersecurity threats, and its cybersecurity processes are integrated into the Company's overall risk management system and processes. This includes use of the National Institute of Standards and Technology's Cybersecurity Framework ("NIST CSF") as a guide in cyber risk management. In addition, several senior leaders and board committees review enterprise risks and compliance issues.

29. Over the course of these Bureau investigations, T-Mobile has provided the Bureau information about its program, policies, network, and technologies that support cyber risk management.

3. Resolution of the Investigations

30. T-Mobile and the Bureau subsequently engaged in settlement negotiations. In the interest of prioritizing the security of T-Mobile consumers and resolving these Investigations, the parties enter into this negotiated Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

32. **Jurisdiction**. T-Mobile 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. Nothing in this agreement shall be construed to limit or expand the FCC's jurisdiction.

33. **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.

34. **Termination of Investigations**. 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 Investigations. The Bureau further agrees that it will not use the facts developed in the Investigations through the Effective Date in any subsequent investigation or proceeding.[55]

35. **Corporate Governance.**

(a) *Chief Information Security Officer*

i. T-Mobile must designate a senior executive or officer who will be responsible for maintaining and monitoring the Information Security Program (hereinafter referred to as the "Chief Information Security Officer" or "CISO" (but may be differently titled in an equivalently ranked position, and whose responsibilities, including those as specified herein, may be carried out by one or more executives or officers, or may be delegated, as necessary)). The Chief Information Security Officer must possess or have access to the authority, reporting lines, independence, resources, education, qualifications, and experience in information security appropriate to the level, size, and complexity of the position's role in maintaining and monitoring the Information Security

[54] Nov. 2021 LOI Response at 13-14.

[55] *See* 47 CFR § 1.93(b).

Program. Nothing herein requires all employees with security-related responsibilities to report to the CISO.

ii. The role of the CISO will include regular and direct reporting to the Chief Executive Officer or their designee, and the Board of Directors, or an appropriate subcommittee of the Board, concerning T-Mobile's cybersecurity posture, the cybersecurity risks faced by T-Mobile, and the cybersecurity implications of T-Mobile's line of business.

iii. The Chief Information Security Officer will report to the Chief Executive Officer or their designee, and the Board of Directors, or an appropriate subcommittee of the Board, any confirmed Covered Incident impacting more than 500 Consumers no later than forty-eight (48) hours after confirmation.

iv. T-Mobile must provide the Chief Information Security Officer and the Information Security Program with the resources and support Reasonably necessary for the Information Security Program to function as required by this Consent Decree.

36. **Compliance Plan**.

(a) **Compliance Plan.** T-Mobile must, within one hundred and eighty (180) days after the Effective Date, develop and implement a Compliance Plan designed to facilitate compliance with the Consent Decree.

37. **Information Security Program**.

(a) **General**.

i. T-Mobile must maintain a comprehensive written information security program ("Information Security Program") that is Reasonably designed to protect the confidentiality, integrity, and availability of Covered Information that T-Mobile owns, licenses, maintains, collects, stores, or transmits on the T-Mobile Network. The Information Security Program must contain administrative, technical, and physical safeguards Reasonably appropriate to:

A. The size and complexity of T-Mobile's operations;

B. The nature and scope of T-Mobile's activities; and

C. The sensitivity of the Covered Information within the T-Mobile Network.

ii. The Information Security Program must be documented. Nothing herein shall prevent the Information Security Program from being distributed across one or more documents, provided that T-Mobile maintains a comprehensive index of any such documents.

iii. The Information Security Program must be regularly reviewed and revised not less than annually.

(b) **Training**.

i. T-Mobile must provide notice of this Consent Decree to Covered Individuals at the Vice President level or higher within ninety (90) days of the Effective Date.

ii. T-Mobile must provide Covered Individuals with annual training on safeguarding Covered Information. T-Mobile must provide the training required under this Paragraph to such employees within ninety (90) days of their starting their responsibilities related to Covered Information. T-Mobile may delay such training until the next annual cycle for any such employees who have already received such training in the twelve months prior to the Effective Date, or for any such employees on leave.

iii. T-Mobile will annually select, based on a Risk Assessment, a subset of Covered Individuals to receive additional role-based training.

(c) **Segmentation**.

i. T-Mobile must maintain, to the extent technically feasible, a hybrid zero-trust framework with respect to T-Mobile-issued employee phones, tablets, virtual workstations, and desktops.

ii. The T-Mobile Network shall be segmented in a way Reasonably designed to provide that only authorized communication channels are opened between segments. As used herein, "communications channels" refers to ports on firewalls located between segments. Communications channels between segments may be authorized and enabled only to the extent necessary to perform relevant business and/or operational functions. When a change in communications channels across segments is made within the T-Mobile Network, T-Mobile must review and revise, at a level appropriate to the scope of that change, the communications channels that are opened between those segments.

iii. T-Mobile must maintain documentation for ports that are prospectively opened on firewalls between segments as follows: For the first two years after the Effective Date, such documentation must include information sufficient to identify the opened port that underwent a state change to open. For the period beginning two years after the Effective Date, such documentation must include both information sufficient to identify the opened port that underwent a state change to open and the business purpose for opening that port.

iv. For those segments within the T-Mobile Network between which communications channels are opened for a legitimate business and/or operational purpose subsequent to the Effective Date, T-Mobile must perform a Risk Assessment consistent with Paragraph 37(l) below.

v. T-Mobile must conduct a review of exceptions to the segmentation protocols and policies applicable to the T-Mobile Network consistent with Paragraph 37(l) below to determine whether the exception is still required and that the risk level is still acceptable.

vi. T-Mobile must take Reasonable steps to separate its production environments and non-production environments in the T-Mobile Network in a manner designed to reduce the risk of unauthorized movement into or out of such environments. Such requirement can be met through the use of firewalls, access control lists, endpoint software, or other similar techniques.

vii. After the Effective Date, to the extent T-Mobile uses Covered Information in a non-production environment for an extended period of time, and the circumstances necessitating such use permit, T-Mobile shall use Compensating Controls on such non-production environment to increase its security in a manner commensurate with the sensitivity of the specific stored Covered Information. Such Compensating Controls can include, without limitation, enhanced monitoring, enhanced logging, access restrictions or other appropriate types of security measures. To the extent a non-production environment requires Internet connectivity, T-Mobile will monitor such connection with intrusion detection, intrusion prevention, or similar technologies. T-Mobile may not permanently maintain Covered Information within non-production environments.

(d) **Network Access Controls**.

i. T-Mobile must regularly conduct vulnerability scans on external-facing ports on the T-Mobile Network. To the extent that a production environment and a non-production environment are separated by one or more firewalls, T-Mobile must regularly conduct vulnerability scans on such firewall(s).

(e) **Account and Password Management**.

i. T-Mobile must require Covered Individuals to use phishing-resistant multi-factor authentication methods in order to access networks, systems, or assets on the T-Mobile Network that store Covered Information, except where such use is technically or otherwise infeasible, or unreasonably burdensome or disruptive.

ii. T-Mobile must maintain policies, procedures, and controls Reasonably designed to manage access to, and use of, accounts with access to Covered Information stored or maintained on the T-Mobile Network. Such policies, procedures, and controls must be consistent with applicable best practices and standards, including, but not limited, to those identified by the National Institute of Standards and Technology (NIST).

iii. T-Mobile must take Reasonable measures to prevent administrative-level passwords from being stored in plaintext. Within two years of the Effective Date, T-Mobile must maintain Reasonable measures to Encrypt or securely store administrative-level passwords. Such measures could include, without limitation, scanning for plaintext and default passwords, automated checking for passwords in code check-in, password vaults, privileged access management, password leak detection, passwordless authentication, multifactor authentication enforcement, or equal or greater security tools that are generally accepted by the security industry.

iv. T-Mobile must maintain operating procedures Reasonably designed to change or disable default system credentials for internal systems within the T-Mobile Network that contain Covered Information. Such requirement to disable can be met by removing default credentials, enabling multifactor authentication or other technical measures that render default credentials ineffective for their intended purpose, or revoking access to systems that contain Covered Information.

(f) **Logging and Monitoring**.

i. T-Mobile must maintain intrusion prevention and detection systems, endpoint protection systems, threat monitoring systems, or similar technologies Reasonably designed to detect and restrict unauthorized access or connections to, and anomalous activities within, the T-Mobile Network. T-Mobile must periodically, but not less than annually, review the tuning of these systems to assess their effectiveness.

ii. T-Mobile must take Reasonable steps to log and monitor in real time activities on the T-Mobile Network that reflect a Reasonable likelihood of compromise to the confidentiality, integrity, or availability of Covered Information.

iii. T-Mobile must maintain a triaging process to prioritize alerts based on criticality and timely respond to security events.

iv. T-Mobile must retain, for not less than 12 months, logs of alerts that indicate suspicious or malicious activity.

v. T-Mobile must periodically, but not less than annually, review the tuning of the systems that generate alerts to verify that the T-Mobile Network is adequately monitored.

(g) **Data Retention, Minimization, and Deletion**.

i. Data Collection

A. T-Mobile must limit the collection of a Consumer's Covered Information to what is Reasonably necessary for a legitimate business or legal purpose(s). Subsequent use of the collected Covered Information must be consistent with such purposes unless T-Mobile has obtained the Consumer's consent or the use is otherwise permitted by law or regulation.

ii. Retention Schedule

A. T-Mobile must maintain, and regularly review and revise as necessary, policies that provide for the destruction, anonymization, or removal of Consumer Covered Information that is no longer necessary for legitimate business purpose(s), subject to the limitations of the inventory process of Paragraph 38, except where such information is otherwise required to be maintained by law or regulation.

iii. Covered Information Minimization

A. T-Mobile must maintain data reduction processes aimed at Reasonably minimizing T-Mobile's long-term storage of Covered Information within the T-Mobile Network (to the extent such storage is not otherwise required to be maintained by law or regulation), subject to the limitations of the inventory process of Paragraph 38.

B. Within one year from the Effective Date, T-Mobile must maintain an attestation process for business owners of databases within the T-Mobile Network that contain Covered Information to verify the owners' efforts to comply with applicable data retention and disposal policies. Such attestations shall be documented and retained by T-Mobile pursuant to the Recordkeeping requirements in Paragraph 43.

(h) **Third-Party Oversight**.

i. T-Mobile must manage Covered Third Parties that access, migrate, duplicate, or otherwise modify Covered Information on the T-Mobile Network.

ii. T-Mobile must maintain, and regularly update as necessary, a centralized inventory that categorizes and ranks Covered Third Parties in accordance with a risk-scoring protocol based on the particularized service the Covered Third Party provides to T-Mobile and specific categories of Covered Information that the Covered Third Party accesses, transmits, uses, or maintains on the T-Mobile Network.

iii. T-Mobile must use Reasonable measures to protect Covered Information maintained by or made available to Covered Third Parties, including (a) exercising due diligence in selecting Covered Third Parties; and (b) prospectively contractually obligating Covered Third Parties to comply with requirements to protect Consumer Covered Information, either by including these requirements expressly, or by mandating compliance with T-Mobile policies, industry standards, or similar that already have such requirements, except where: (i) a Covered Third Party is already subject to negotiated and agreed-upon security terms, or (ii) T-Mobile, after performing a Risk

Assessment, has granted an exception to a security requirement during or subsequent to the contracting process.

(i) **Critical Asset Inventory Process**.

i. T-Mobile must maintain a process to inventory all Critical Assets. The asset inventory must, at a minimum, identify the Critical Asset's: (i) name; (ii) assignment group; (iii) "managed by" group; (iv) location within the T-Mobile Network; (v) IP address; and (vi) serial number (where applicable). T-Mobile must maintain a process Reasonably designed to maintain a log of the disposition of any Critical Assets removed from the T-Mobile Network. Critical Assets shall remain in the log for three years after removal from the T-Mobile Network.

ii. T-Mobile must take Reasonable steps to disable and/or remove, consistent with T-Mobile's asset management policies, Critical Assets that are no longer necessary for a legitimate business or operational purpose.

(j) **Patch and Security Update Management**.

i. T-Mobile must maintain administrative and technical controls Reasonably designed to address the potential impact that security patches and security updates may have on the T-Mobile Network. T-Mobile must maintain appropriate patch management solutions within the T-Mobile Network.

ii. T-Mobile must schedule and install any security update or security patch, considering (without limitation) the severity of the vulnerability for which the update or patch has been released, the severity of the issue in the context of the T-Mobile Network, the impact on T-Mobile's ongoing business and network operations, whether the vulnerability is being actively exploited by threat actors, and the risk ratings articulated by the Cybersecurity and Infrastructure Security Agency (CISA) or other relevant governmental authority and/or an equivalent United States Department of Homeland Security (DHS) agency designated as responsible for cybersecurity.

(k) **Vulnerability Management**.

i. T-Mobile must implement and maintain a program reasonably designed to identify, assess, and remediate security vulnerabilities within the T-Mobile Network.

ii. T-Mobile must rate and rank the criticality of vulnerabilities, in accordance with an industry-standard framework (e.g., NVD, CVSS, or equivalent standard), revealed as a result of testing and scanning. For each vulnerability rated as critical, T-Mobile must take Reasonable steps to commence remediation planning and execution consistent with T-Mobile's risk remediation policies.

(l) **Risk Assessments**.

i. T-Mobile must maintain and regularly review and revise as necessary, a risk-assessment program Reasonably designed to identify, assess, prioritize, and manage material cybersecurity risks to the T-Mobile Network. The program must include methods and criteria for assessing material cybersecurity risks that are consistent with a risk assessment method that is provided by a nationally-recognized information security body ("Risk Assessment Method") and must also identify the levels of formal approval required to accept a material cybersecurity risk (if any) and the specific documentation required to be created and maintained of the review process and acceptance (if any). The level of

formal approval and documentation prescribed by the Risk Assessment Method shall be commensurate with the level of risk, with increasing levels of risk requiring more formal approval or documentation and lesser levels of risk requiring less (or no) approval or documentation.

ii. The Risk Assessment Method must provide, at a minimum, that:

A. T-Mobile take Reasonable steps to assess and document, at least annually and at a level appropriate to the risk, internal and external material cybersecurity risks to the confidentiality, integrity, and availability of Covered Information; and

B. T-Mobile take Reasonable steps to assess and document, at least annually, the sufficiency and effectiveness of any safeguards in place to address identified material cybersecurity risks and modify such safeguards as necessary.

iii. For those material cybersecurity risks that require documentation, T-Mobile must generate and retain a report (which may be reflected in one or more documents or electronic records) for at least three years demonstrating how such risk is to be managed in consideration of, among other things, the cost to T-Mobile or difficulty in implementing effective countermeasures. T-Mobile must maintain a process to monitor accepted material cybersecurity risks that is consistent with T-Mobile's risk assessment policies.

38. **Consumer Data Inventory Process**.

(a) T-Mobile must maintain a process to inventory its Consumers' Covered Information maintained in databases on the T-Mobile Network ("Consumer Data Inventory Process"). The Consumer Data Inventory Process must be Reasonably designed to facilitate minimization and appropriate retention and disposal of Consumer Covered Information, subject to the capabilities and limitations of automated and manual inventory control solutions.

39. **Forensic Reports**.

(a) Following a Covered Incident that affects 10,000 or more Consumers, T-Mobile must obtain, and furnish to the Bureau upon formal written request, a forensic report memorializing the facts of the Covered Incident, including how it occurred and the scope of the compromise ("Forensic Report"). Each Forensic Report must be prepared by a qualified professional with at least five (5) years of experience conducting forensic analyses of data security incidents.

(b) Nothing contained in this Consent Decree shall directly or indirectly in any way whatsoever impair, prejudice, or otherwise adversely affect T-Mobile's right at any time to assert attorney-client privilege, work product privilege, or any other applicable privilege, doctrine, protection, or immunity, nor the Bureau's right to dispute, contest, or challenge any such assertion.

40. **Representations to Consumers**.

(a) **Prohibitions on Misrepresentations**.

i. T-Mobile shall not misrepresent in its privacy policies, statements on its website, its subscriber agreements, or other communications or representations made to Consumers, the extent to which T-Mobile Reasonably protects the privacy or security of Consumers' Covered Information.

(b) **Privacy Policies**.

i. The privacy policies and statements on T-Mobile's website regarding Consumer privacy and the security of Consumers' Covered Information must (A) comply with applicable law, and (B) reflect T-Mobile's data security and privacy practices and be updated routinely to reflect any material changes.

41. **Independent Third-Party Assessment**.

(a) T-Mobile must obtain an assessment of T-Mobile's compliance with the terms of this Consent Decree (the "First Third-Party Assessment"). Such assessment will not cover Paragraphs 37(c)(iii) (documentation requirements related to prospectively-opened ports) and 37(e)(iii) (measures to prevent administrative-level passwords from being stored in plaintext). Following implementation of the prospective requirements contained in Paragraphs 37(c)(iii) and 37(e)(iii), T-Mobile must obtain a follow-up assessment addressing T-Mobile's compliance with Paragraphs 37(c)(iii) and 37(e)(iii) (the "Second Third-Party Assessment," and together with the First Third-Party Assessment, the "Third-Party Assessments").

(b) T-Mobile will be responsible for all costs associated with the Third-Party Assessments.

(c) The Third-Party Assessments required by this Section must be conducted by an independent third-party (the "Third-Party Assessor") who: (1) is a United States citizen; (2) uses procedures and standards generally accepted in the profession; (3) conducts an independent review; and (4) retains all documents relevant to each Assessment for three (3) years after completion of such Assessment.

(d) T-Mobile must provide the Bureau with the name, affiliation, and qualifications of the proposed Third-Party Assessor. The Bureau shall inform T-Mobile of any objection, based on demonstrated good cause, to the proposed Third-Party Assessor no later than fourteen (14) calendar days after the Bureau has received notice of T-Mobile's proposed candidate. T-Mobile shall have fourteen (14) calendar days to respond to the Bureau's objection(s). If the Bureau then stands on its objection that the proposed candidate is not qualified to serve as the Third-Party Assessor, T-Mobile shall then propose an additional candidate(s) within thirty (30) calendar days of the Bureau's determination. This process shall continue until a Third-Party Assessor acceptable to the Bureau and T-Mobile is selected.

(e) The reporting period for the First Third-Party Assessment must commence 180 days after the Effective Date and must cover the first three hundred and sixty-five (365) days that begins after expiration of the 180-day period following the Effective Date. The reporting period for the Second Third-Party Assessment must cover the three hundred and sixty-five (365) days following the First Third-Party Assessment.

(f) The findings of the First Third-Party Assessment must be documented in an individual report (the "First Third-Party Assessor's Report"). The First Third-Party Assessor's Report must, to the extent possible with a Reasonable effort:

i. Identify the specific administrative, technical, and physical safeguards maintained by T-Mobile;

ii. Document the extent to which the identified administrative, technical and physical safeguards are Reasonable considering T-Mobile's size and complexity, the nature and scope of T-Mobile's activities, and the sensitivity of the Covered Information maintained by T-Mobile on the T-Mobile Network;

iii. Assess and certify the extent to which the administrative, technical, and physical safeguards that have been maintained by T-Mobile Reasonably meet the requirements of the Information Security Program; and

iv. Specifically review and evaluate T-Mobile's compliance with the requirements set forth in Paragraphs 35, 36, 37(a) – (b); 37(c)(i) – (ii); 37(c)(iv) – (vii); 37(d), 37(e)(i) – (ii); 37(e)(iv); 37(f) – (l); 38, 39, 40, 42 – 43 of this Consent Decree regarding the Information Security Program.

(g) The findings of the Second Third-Party Assessment must also be documented in an individual report (the "Second Third-Party Assessor's Report"). The Second Third-Party Assessor's Report must, to the extent possible with a Reasonable effort, specifically review and evaluate T-Mobile's compliance with the requirements set forth in Paragraphs 37(c)(iii) and 37(e)(iii) of this Consent Decree.

(h) T-Mobile must provide a copy of each Third-Party Assessor's Report to the Bureau within thirty (30) days of the completion of the Third-Party Assessment. The Bureau shall, to the extent permitted by applicable laws and regulations, treat each Third-Party Assessor's Report as confidential and exempt from disclosure under the relevant public records laws.

(i) To the extent that a Third-Party Assessor's Report purports to identify any areas of non-compliance, T-Mobile will have ninety (90) days from the date of the report's receipt to identify any objections related thereto. In the event of any such objections, T-Mobile's compliance obligations will be considered satisfied upon the delivery of a written explanation to the Bureau of the good-faith basis for the objections.

(j) No penalties, remedies, or actions for noncompliance with this Consent Decree will be exercised by the Bureau, provided that:

i. The noncompliance has not caused harm to Consumers;

ii. T-Mobile develops a compliance plan to remediate any purported areas of noncompliance to which T-Mobile has not objected;

iii. That compliance plan is developed and implemented within a Reasonable period of time; and

iv. The compliance plan is reviewed and remediation is timely verified to Reasonably address the area of noncompliance by the Third-Party Assessor.

(k) In connection with each Third-Party Assessment, T-Mobile must take Reasonable steps to:

i. Provide or otherwise make available to the Third-Party Assessor all information and material in its possession, custody, or control that is relevant and proportional to the Third-Party Assessment for which there is no claim of privilege;

ii. Provide or otherwise make available to the Third-Party Assessor information about the information technology assets deemed within the scope of the Third-Party Assessment; and

iii. Disclose material facts to the Third-Party Assessor, and not intentionally misrepresent any fact material to the Third-Party Assessment.

42. **Reporting Noncompliance**.

(a) T-Mobile shall report any material noncompliance with the terms of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance, if

such noncompliance cannot be remedied or otherwise addressed after such discovery.

(b) All reports of material noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to Michael.Epshteyn@fcc.gov, James.Graves@fcc.gov, Shana.Yates@fcc.gov, and EB-TCD-Privacy@fcc.gov.

(c) No penalties, remedies, or actions for reported material noncompliance with the terms of this Consent Decree will be exercised by the Bureau, provided that:

i. The noncompliance has not caused harm to Consumers; and

ii. T-Mobile has a Reasonable compliance plan in place to achieve compliance and Reasonably executes such plan.

43. **Recordkeeping**.

(a) T-Mobile must retain the reports, records, and information required by this Consent Decree for three (3) years from the date of their creation or receipt. Upon sufficient prior written request of the Bureau, T-Mobile shall make available any reports, records, or information maintained pursuant to this Section. Such records shall include:

i. The index of documents required to be maintained pursuant to Paragraph 37(a)(ii);

ii. The documentation of prospectively-opened ports required to be created pursuant to Paragraph 37(c)(iii);

iii. The attestations required to be made by business owners of databases pursuant to Paragraph 37(g)(iii)(B);

iv. The Risk Assessments required to be documented pursuant to Paragraph 37(l);

v. The logs of removed Critical Assets required to be maintained pursuant to Paragraph 37(i)(ii); and,

vi. The Forensic Reports required to be created pursuant to Paragraph 39.

(b) Nothing contained herein shall directly or indirectly in any way whatsoever impair, prejudice, or otherwise adversely affect T-Mobile's right at any time to exercise attorney-client privilege, work product privilege, or any other applicable privilege, doctrine, or immunity.

44. **Termination Date**. The requirements set forth in this Consent Decree shall expire three (3) years after the Effective Date.

45. **Civil Penalty**. T-Mobile will pay a civil penalty to the United States Treasury in the amount of $15,750,000 within thirty (30) calendar days of the Effective Date. T-Mobile acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[56] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. T-Mobile shall send electronic notification of payment to EB-TCD-Privacy@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by

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

check or money order. Below are instructions that payors should follow based on the form of payment selected:[57]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[58] or printed CORES form[59] 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).[60] 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.

46. 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.

47. **Cybersecurity Investment**. T-Mobile will invest $15,750,00 in additional incremental spend for data security and related technology and operations during the first two years covered by this consent decree to implement the requirements of this Consent Decree. Such spending will be used on, but is not limited to the following Consent Decree provisions: § III (Terms of Agreement), ¶ 37 (Information Security Program), (c) (Segmentation), ii (documentation relating to prospectively opened ports); § III (Terms of Agreement), ¶ 37 (Information Security Program), (e) Account and Password Management); iii (secure storage of administrative-level passwords); § III (Terms of Agreement), ¶ 37 (Information Security Program), (g) (Data Retention, Minimization, and Deletion), iii (covered information minimization), B (business owner attestations). T-Mobile shall Reasonably memorialize its investment

[57] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

[59] 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.

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

pursuant to this paragraph and shall provide a declaration to that effect to the Bureau upon written request.

48. **Event of Default.** T-Mobile agrees that an Event of Default shall occur upon the failure by T-Mobile to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

49. **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 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 T-Mobile.

50. **Waivers**. As of the Effective Date, T-Mobile 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. T-Mobile 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 T-Mobile nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and T-Mobile shall waive any statutory right to a trial *de novo*. T-Mobile hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[61] relating to the matters addressed in this Consent Decree.

51. **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.

52. **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.

53. **Subsequent Rule, Order, Law, or Regulation**. 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), or any federal law or regulation, that provision will be superseded by such Rule, order, law, or regulation.

54. **Successors and Assigns**. T-Mobile agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

55. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree.

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

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

57. **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.

58. **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.

59. **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

_____
Edward Smith
Senior Vice President for Government Affairs
T-Mobile

_____
Date

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

In the Matter of	)	
	)	
July 1, 2024	)	WC Docket No. 24-41
Annual Access Charge Tariff Filings	)	
	)	

ORDER

Adopted: September 9, 2024 **Released: September 9, 2024**

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), on our own motion, provides a limited waiver to price cap local exchange carriers and rate-of-return carriers that elected incentive regulation for their business data services (BDS) (collectively "carriers") extending the October 1, 2024 effective date for the mid-year tariff filing reflecting exogenous cost adjustments.[1] Generally, the Commission's rules may be waived for good cause shown.[2] We find that special circumstances warrant an extension of the effective date of the mid-year exogenous cost tariff filing from October 1, 2024 to November 1, 2024 to allow carriers sufficient time to calculate and tariff rate changes based in part on the Commission's fiscal year 2024 regulatory fee for interstate telecommunications service providers.[3]

2. In the *2024 Tariff Review Plan Order*, the Bureau required carriers to reflect any exogenous cost adjustments for changes in telecommunications relay service (TRS) fees, regulatory fees, and North American Numbering Plan Administration (NANPA) fees in tariffed rates to be effective October 1, 2024.[4] Carriers are required to file adjustments to their tariffed BDS rates to reflect the effect

[1] *See July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-434, at 11-12, 15, paras. 34, 46 (WCB/PPD May 10, 2024) (*2024 Tariff Review Plan Order*).

[2] 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of a filing deadline in the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

[3] *See Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024 et al.*, MD Docket No. 24-86 et al., Second Report and Order, FCC 24-93, at 57, Appx. C (Sept. 6, 2024) (*2024 Regulatory Fees Order*); *Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024 et al.*, MD Docket No. 24-86 et al., Second Notice of Proposed Rulemaking, FCC 24-68, at 33, Appx. A (June 13, 2024) (*2024 Regulatory Fees Second NPRM*).

[4] *2024 Tariff Review Plan Order* at 11-12, 15, paras. 34, 46; *see* 47 CFR § 61.45(a), (b)(1)(1), (d); *id*. § 61.50(c). Exogenous costs are those costs incurred by the carrier that are "triggered by administrative, legislative or judicial action beyond the control of the carriers….that should result in an adjustment to the cap in order to ensure that the price cap formula does not lead to unreasonably high or unreasonably low rates." *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6807, para. 166 (1990); *see generally id*. at 6808-10, paras. 166-190.

of exogenous cost changes in a mid-year tariff filing.[5] Price cap carriers also are required to file adjustments to their tariffed common line rates to reflect the effect of exogenous cost changes in a mid-year tariff filing.[6] Carriers submit tariff review plan (TRP) workbooks to support adjustments to rates based on factors determined by the TRS fees, regulatory fees, and NANPA fees.[7] This mid-year tariff filing has an effective date of October 1, 2024.[8] To be effective on October 1, 2024, mid-year tariff filings filed on 15-days' notice would be due September 16, 2024, and mid-year tariff filings filed on 7-days' notice would be due September 24, 2024.[9]

3. In addition, certain carriers are required to submit tariff revisions to reflect the fourth quarter 2024 federal universal service fund (FUSF) contribution factor.[10] Every quarter, the Commission's Office of Managing Director adopts a FUSF contribution factor that determines the charges carriers may recover from their end user customers to satisfy their universal service fund (USF) obligations.[11] Carriers submit tariff revisions effective October 1 to reflect the fourth quarter FUSF contribution factor.[12] Carriers typically submit one tariff filing to be effective October 1 implementing both the FUSF contribution factor and exogenous cost adjustments.

4. Carriers recover the assessment of regulatory fees imposed by Section 9 of the Communications Act of 1934, as amended (the Act), through exogenous cost adjustments to their rates.[13] Pursuant to Section 9 of the Act, the Commission is required to assess and collect regulatory fees reasonably expected to recover its annual appropriation.[14] As part of this process the Commission adopts a final regulatory fee for interstate telecommunications service providers.[15] The Bureau specifies that this

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[5] *See 2024 Tariff Review Plan Order* at 11-12, 15, paras. 34, 46; 47 CFR § 61.45(a) ("Price cap local exchange carriers…shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes"); *see id*. § 61.50(c) (Rate-of-return carriers subject to section 61.50 "shall employ the procedures outlined in §§ 61.42 through 61.49 to calculate rates for its business data services and adjust its indexes for those rates.").

[6] *See 2024 Tariff Review Plan Order* at 11-12, paras. 33-34.

[7] *See id.* at 11-12, 15, paras. 34, 46.

[8] *Id*.

[9] *See* 47 U.S.C. § 204(a)(3) (Streamlined tariff filings "shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission"); 47 CFR § 61.58(a)(2)(i) (pursuant to section 204(a)(3) of the Act, local exchange carriers may file streamlined tariffs on 7-days' notice for rate decreases, and on 15-days' notice for rate increases).

[10] *See* 47 CFR § 69.158 ("To the extent the company makes contributions to the Universal Service Support Mechanisms pursuant to §§ 54.706 and 54.709 of this chapter and the local exchange carrier seeks to recover some or all of the amount of such contribution, the local exchange carrier shall recover those contributions through a charge to end users other than Lifeline users….").

[11] *Proposed Fourth Quarter 2023 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice 38 FCC Rcd 8362, 8367 (WCB 2023); 47 CFR § 54.712.

[12] *See* 47 CFR § 69.158; *see generally Federal-State Joint Board on Universal Service, et al*., CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

[13] *See Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Communications Act*, Order, 9 FCC Rcd 6060 (Comm. Car. Bur. 1994), Erratum, 9 FCC Rcd 6487 (Comm. Car. Bur. 1994). Carriers recover through exogenous cost adjustments to BDS rates the portion of regulatory fees attributable to these services. Price cap carriers also recover through exogenous cost adjustments to common line rates the portion of regulatory fees attributable to common line services.

[14] *See 2024 Regulatory Fees Order* at 2, para. 1; *2024 Regulatory Fees Second NPRM* at 2-3, para. 3.

[15] *See 2024 Regulatory Fees Order* at 57, Appx. C; *2024 Regulatory Fees Second NPRM* at 33, Appx. A.

fee be used as the regulatory fee factor to adjust rates reflected in the mid-year tariff filing.[16] Because this fee was recently adopted by the Commission[17] and the Bureau has yet to release 2024 TRP workbooks calculating rate adjustments based in part on this fee,[18] carriers do not have sufficient time to prepare their mid-year exogenous cost tariff filings adjusting their rates to correctly reflect the cost impact of the fee and calculating necessary rate adjustments in advance of the tariff filing deadlines. This presents a special circumstance warranting deviation from the October 1 effective date that will serve the public interest.

5. We find good cause to waive the October 1, 2024 exogenous cost tariff filing effective date this year. We find that a limited one-time waiver of the October 1, 2024 effective date is warranted and necessary to allow carriers sufficient time to accurately prepare their mid-year exogenous cost tariff filing. Taking hardship, equity, and overall implementation of policy into consideration, we conclude that the administrative burdens imposed on carriers to comply with the October 1 effective date for the limited purpose of the exogenous cost adjustments in these circumstances outweighs the need to strictly enforce this effective date. At the same time, since FUSF charges, unlike the regulatory fee, are tariffed items, appearing as either a separate rate to be assessed or a percentage to be applied to interstate end user rates or revenues on a customer's bill, **October 1, 2024** will remain the effective date for the FUSF contribution factor tariff filing. FUSF contribution factor tariff filings submitted on 15-days' notice are due on **September 16, 2024** to be effective October 1, 2024, and FUSF contribution factor tariff filings submitted on 7-days' notice are due on **September 24, 2024** to be effective October 1, 2024.[19]

6. For the reasons explained above, on our own motion, we find good cause exists to grant a limited one-time waiver extending the effective date for the mid-year exogenous cost tariff filing adopted by the Bureau in the *2024 Tariff Review Plan Order* from October 1, 2024 to November 1, 2024.[20] Under this limited waiver, carriers submitting mid-year exogenous cost tariff filings on 15-days' notice must submit their tariff filings on **October 17, 2024** to be effective November 1, 2024, and carriers submitting mid-year exogenous cost tariff filings on 7-days' notice must submit their tariff filings on **October 25, 2024** to be effective November 1, 2024.[21] Carriers shall reflect an exogenous cost adjustment for TRS fees, regulatory fees, and NANPA fees in rates to become effective **November 1, 2024**. The payment of TRS fees is a tariff year obligation thus the exogenous cost adjustment for TRS shall be "grossed up" to spread the entire adjustment over the remaining eight months in the tariff year.[22] The payments of regulatory fees and NANPA fees are fiscal year obligations and, as a result, the exogenous cost adjustments for regulatory fees and NANPA fees shall be "grossed up" to spread the entire adjustment over the 11 months between November 1, 2024 and September 30, 2025. Consistent with past practice,

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[16] *See, e.g.*, *Wireline Competition Bureau Announces Posting of 2023 Tariff Review Plan for Exogenous Cost Filings by Rate-of-Return Carriers that Elected Incentive Regulation for Business Data Services*, Public Notice, 38 FCC Rcd 7801, 7801 (WCB 2023) (*2023 Exogenous Costs PN*); FCC, TY 2023-2024 Midcourse BDS TRPs for Incentive Regulation ILECs, https://www.fcc.gov/wireline-competition/ty-2023-2024-midcourse-bds-trps-incentive-regulation-ilecs (last visited Sept. 9, 2024).

[17] *2024 Regulatory Fees Order* at 57, Appx. C (adopting a fiscal year 2024 regulatory fee (per revenue dollar) for interstate telecommunications service providers of 0.005420).

[18] *See 2023 Exogenous Costs PN*, 38 FCC Rcd at 7801.

[19] *See* 47 U.S.C. § 204(a)(3); 47 CFR § 61.58(a)(2)(i).

[20] *See 2024 Tariff Review Plan Order* at 11-12, 15, paras. 34, 46; 47 CFR § 1.3.

[21] *See* 47 U.S.C. § 204(a)(3); 47 CFR § 61.58(a)(2)(i).

[22] *See 2024 Tariff Review Plan Order* at 11-12, 15, paras. 34, 46.

the Bureau will release a forthcoming Public Notice with the mid-year 2024 TRP workbooks for use by rate-of-return carriers that elected BDS incentive regulation for their exogenous cost tariff filings.[23]

7. Finally, carriers historically file both the FUSF contribution factor and exogenous costs adjustments to be effective October 1. Due to the unique circumstances this year, we will allow the limited number of carriers filing a November 1 tariff adjustment to treat both the October and November tariff filings as a single tariff transmittal. Thus, a carrier making an FUSF contribution factor tariff filing effective October 1, 2024 may treat its subsequent exogenous cost tariff filing effective November 1, 2024 as a tariff transmittal amending the FUSF contribution factor tariff filing effective October 1, 2024. In their amended transmittal letters, carriers should refer to the original tariff transmittal number implementing the FUSF contribution factor effective October 1, 2024. Amended transmittals do not require submission of a standard tariff filing fee since such fee would have already been paid as part of the original tariff transmittal.[24] If the carrier did not submit the FUSF contribution factor tariff filing effective October 1, 2024 and submits the exogenous cost tariff filing effective November 1, 2024, the carrier would be required to submit the standard tariff filing fee for a tariff revision. We remind carriers that they are required to submit a new base document within the first five business days of the following month incorporating the prior month tariff revisions.[25]

8. For more information about this Order, please contact either Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov, or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, Richard.Kwiatkowski@fcc.gov.

9. Accordingly, IT IS ORDERED, pursuant to sections 0.91, 0.291, 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the October 1, 2024 effective date for annual exogenous cost adjustments to tariffed rates adopted in the *2024 Tariff Review Plan Order* IS WAIVED until November 1, 2024, as described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Victoria S. Goldberg
Chief, Pricing Policy Division
Wireline Competition Bureau

[23] *See, e.g., 2023 Exogenous Costs PN* at 7801.

[24] *See* 47 CFR §§ 1.1105, 61.15.

[25] *See* 47 CFR § 61.16.

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

In re Applications of	)	
	)	
George G. Duncan	)	Acct. No. 202441420014
For Renewal of License of	)	FRN: 0023829625
Station W32EV-D	)	Facility ID No. 68911
Adamsville, Tennessee	)	LMS File Nos. 0000141690 and 0000247088
	)	
For Assignment of License of	)	
Station W32EV-D	)	
Adamsville, Tennessee	)	

ORDER

Adopted: September 30, 2024 **Released: September 30, 2024**

By the Chief, Video Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and George G. Duncan (Licensee), licensee of Class A television station W32EV-D, Adamsville, Tennessee (Station). The Consent Decree resolves an investigation arising from the Bureau's review of the captioned license renewal application[1] (Renewal Application) and application for assignment of license (Assignment Application).[2] In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with: (i) Section 73.3526 of the Commission's rules (Rules), which requires stations to maintain an online public inspection file and placing specific documents into that file at required intervals;[3] (ii) Section 73.3514(a) of the Rules, which requires Licensees to provide complete responses in applications.[4] and (iii) Section 1.65(a) of the Rules, which requires applicants maintain the accuracy of their applications during their pendency, and promptly provide updated or corrected information as necessary.[5] We find that adoption of the Consent Decree permits action, subject to certain terms and conditions, on both the Station's Renewal Application and Assignment Application.

2. The Bureau and Licensee have negotiated the terms of the attached Consent Decree in which Licensee stipulates that it violated sections 73.3526, 73.3514(a), and 1.65(a) of the Rules. Pursuant to the Consent Decree, Licensee agrees to, among other things, make a civil penalty payment to the

[1] Application of George G. Duncan for Renewal of License, LMS File No. 0000141690 (filed Mar. 30, 2021). At the time of filing, the Station was assigned call letters W18BL-D. Beginning December 9, 2021, the Station was assigned call letters W32EV-D and will be referred to as such.

[2] Application of George G. Duncan for Assignment of Authorization, LMS File No. 0000247088 (filed June 27, 2024). As a result of the investigation, the Bureau's Video Division suspended processing of the Renewal Application and has been unable to act upon Licensee's pending application for assignment of authorization. *See, Stockholders of CBS Inc., (Transferor) and Westinghouse Electric Corporation (Transferee)*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3748, para. 31 (1995) ("Generally, where there are pending both a transfer/assignment application and a renewal application involving the same broadcast station, the Commission refrains from acting on the transfer/assignment application commencing on the date the station's renewal application must be filed.").

[3] 47 CFR § 73.3526.

[4] 47 CFR § 73.3514(a).

[5] 47 CFR § 1.65(a).

United States Treasury in the amount of Fifty Three Thousand Dollars ($53,000) within 15 business days of closing of the transaction contemplated in the Assignment Application.

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. Based on the record before us, we also conclude that grant of the Assignment Application is in the public interest pursuant to section 310(d) of the Communications Act of 1934, as amended (Act),[6] and grant of the Renewal Application is consistent with section 309(k)(2) of the Act.[7] In accordance with the Consent Decree, we grant the Assignment Application and Renewal Application conditioned upon satisfaction of the Civil Penalty and all other terms set forth in the Consent Decree. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,[8] and by the authority delegated by sections 0.61, 0.204, and 0.283 of the Rules,[9] the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

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

6. **IT IS FURTHER ORDERED** that, pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,[10] the application of George G. Duncan for renewal of license for Station W32EV-D, Adamsville, Tennessee (LMS File No. 0000141690) **IS GRANTED**, as conditioned herein.

7. **IT IS FURTHER ORDERED** that, pursuant to section 310(d) of the Communications Act of 1934, as amended,[11] the application for assignment of authorization (LMS File No. 0000247088) **IS GRANTED**, as conditioned herein.

8. **IT IS FURTHER ORDERED** that, copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Licensee at George G. Duncan, PO Box 10, Savanah, TN 38372 and by electronic mail to georgeduncan@yahoo.com and assignee at IHS Global Media Group Inc, 121B Volunteer Drive, Lexington, TN 38351. Copies shall also be sent to Licensee's representative, Susan Hansen, by electronic mail to stcl@comcast.net and assignee's representative, Charita Johnson, by electronic mail to cjohnson@ihsgm.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara Kreisman
Chief, Video Division
Media Bureau

[6] 47 U.S.C. § 310(d).

[7] 47 U.S.C. §309(k)(2) (permitting the Commission to grant a renewal application that does not comply with the requirements of 47 U.S.C. § 309(k)(1) "on terms and conditions that are appropriate….").

[8] 47 U.S.C. §§ 154(i), 154(j), 503(b).

[9] 47 CFR §§ 0.61, 0.204, 0.283.

[10] 47 USC § 309(k)(2).

[11] 47 U.S.C. § 310(d).

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

In re Application of	)	
	)	
George G. Duncan	)	Acct. No. 202441420014
For Renewal of License for	)	FRN: 0023829625
Station W32EV-D	)	Facility ID No. 68911
Adamsville, Tennessee	)	LMS File Nos. 0000141690 and 0000247088
	)	
For Assignment of License of	)	
Station W32EV-D	)	
Adamsville, Tennessee	)	
	)	

CONSENT DECREE

I. INTRODUCTION

1. The Media Bureau of the Federal Communications Commission and George G. Duncan hereby enter into this Consent Decree for the purposes of (i) terminating the Media Bureau's investigation into the Licensee's compliance with sections 73.3526, 73.3514(a), and 1.65(a) of the Commission's rules[12] and (ii) acting on the Licensee's above captioned pending applications for renewal of license and assignment subject to the terms and conditions set forth below, including payment of the civil penalty in the amount of Fifty Three Thousand dollars ($53,000).

II. 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) "Assignment Application" means application of George G. Duncan, for assignment of authorization for station W32EV-D, LMS File No. 0000247088.

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

(e) "Closing Date" means the date the transaction contemplated in the application of George G. Duncan for assignment of authorization for station W32EV-D, LMS File No. 0000247088, is consummated. *See* 47 CFR § 1.948 (Assignment of authorization or transfer of control, notification of consummation).

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

(g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Licensee is subject by virtue of it being a Commission licensee.

(h) "Disclosure Rule" means 47 CFR § 1.65(a).

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

[12] 47 CFR §§ 73.3527, 73.3539(a), 73.3514(a), 1.65(a).

(j) "Information Rule" means 47 CFR § 73.3514(a).

(k) "Investigation" means the inquiry into whether Licensee violated one or more of the Communications Laws, specifically 47 CFR §§ 73.3526, 73.3514(a), and 1.65(a) of the Rules.

(l) "Licensee" means George G. Duncan, and their affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

(o) "Renewal Application" means application of George G. Duncan, for renewal of the Class A television broadcast license for station W32EV-D, LMS File No. 0000141690, as amended.

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

(q) "Station" means station W32EV-D, Adamsville, Tennessee, facility ID 68911.

III. BACKGROUND

3. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed ...."[13] In its Renewal Application, the Licensee certified "yes" to the statement that "the documentation, required by 47 C.F.R. Section 73.3526...has been uploaded to the station's public inspection file when required." Furthermore, Section 1.65(a) of the Rules requires every applicant to maintain the accuracy and completeness of a pending application and absent good cause, amend such applications within 30-days.[14] The Licensee failed to maintain the accuracy of its application by not amending its application to disclose violations that occurred after the application was filed.

4. Section 73.3526 requires Class A television 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.[15] This includes among other requirements, the requirement that quarterly issues and programs lists, records concerning commercial limits, children's television programming reports, and material relating to FCC investigations be uploaded to the station's online public inspection file no later than the tenth day after each quarter. 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 regulatory obligations and whether it has operated in the public interest, convivence, and necessity.

5. During the course of the Investigation we have determined that the Licensee failed to timely place in its online public inspection file copies of 32 issues and programs lists,[16] 15 records

[13] 47 CFR § 73.3514(a).

[14] 47 CFR § 1.65(a).

[15] 47 CFR § 73.3526.

[16] 47 CFR § 73.3526(e)(11)(i).

concerning commercial limits,[17] and four children's television programming reports.[18] Of the late-filed issues and programs lists, nine were due after the Renewal Application was filed. On August 30, 2024, at the request of Bureau staff, the Licensee filed an amendment to the Renewal Application, changing the response to the question asking if "the documentation, required by 47 C.F.R. Section 73.3526...has been uploaded to the station's public inspection file when required" from "Yes" to "No."[19] Based on the Licensee's failure to comply with the Online Public Inspection File Rule, Information Rule, and the Disclosure Rule, the Bureau commenced the Investigation and suspended processing the Renewal Application. As of the date of the Adopting Order, all required documents have been placed in the Station's OPIF and the Licensee has amended the Renewal Application to disclose all violations discussed herein.

6. On June 27, 2024, Licensee filed an Assignment Application seeking authority to assign the Station's license to an unrelated third party, IHS Global Media Group Inc. The Assignment Application was placed on public notice on July 10, 2024. All petitions to deny or objections to the Assignment Application were required to be filed by August 9, 2024. No petition to deny or objection to the Assignment Application has been received by the Commission. However, as a result of the Investigation, the Renewal Application and Assignment Application remain pending.[20]

7. The Bureau and Licensee have negotiated the terms of the Consent Decree, subject to specific terms and conditions, that terminates the Investigation, grants the Renewal Application, and grants the Assignment Application. As part of the Consent Decree the Licensee has agreed to pay a civil penalty in the amount of Fifty Three Thousand dollars ($53,000) to the U.S. Treasury within 15 days of the Closing Date of the transaction proposed in the Assignment Application.

IV. TERMS OF AGREEMENT

8. **Adopting Order**. The Parties agree that the provisions of this Consent Decree shall be incorporated by reference in an Adopting Order without change, addition, deletion, or modification.

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

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

11. **Violations**. The Parties agree that any violation of the Adopting Order or the terms of this Consent Decree, in whole or in part, shall constitute a separate violation of a Commission order, entitling the Commission, or its delegated authority to exercise any rights and remedies attendant to the

[17] 47 CFR § 73.3526(e)(11)(ii). Effective January 21, 2020, this rule was amended to require annual reporting of certifications of compliance with the Commission's commercial limits for children's programming, rather than quarterly compliance reporting. *See Media Bureau Announces KidVid Rules Effective Date & Related Guidance*, Public Notice, MB Docket No. 18-202, 34 FCC Rcd 12517 (2019) (*KidVid Public Notice*).

[18] 47 CFR § 73.3526(e)(11)(iii). Effective January 21, 2020, this rule was amended to require annual reporting of children's television programming, rather than quarterly reporting. *See KidVid Public Notice*.

[19] Amendment to Application of George G. Duncan for Renewal of License, LMS File No. 0000141690 (Filed Aug. 30, 2024).

[20] With limited exception, it is Commission policy to not grant an assignment application while a Station's license renewal application is pending. *See, Stockholders of CBS Inc., (Transferor) and Westinghouse Electric Corporation (Transferee)*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3748, para. 31 (1995) ("Generally, where there are pending both a transfer/assignment application and a renewal application involving the same broadcast station, the Commission refrains from acting on the transfer/assignment application commencing on the date the station's renewal application must be filed.").

enforcement of a Commission order.

12. **Admission of Liability**. The Licensee admits that it violated sections, 73.3526, 73.3514(a), and 1.65(a) of the Rules, as described in paragraphs 3 to 5 of this Consent Decree. By entering into this Consent Decree, the Licensee makes no other admission of liability of the Act or Rules, and the Bureau makes no finding of any other liability or violation. The Licensee further admits, for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 14 herein, that its actions described in Paragraphs 3 to 5 above were violations of the Rules. By entering into this Consent Decree, the Licensee makes no other admission of liability of any Communications Law, and the Bureau makes no finding of any other liability or violation.

13. 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 the Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the timely filing of applications or otherwise.[21]

14. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and to take the actions specified herein, including the actions specified in Paragraphs 19 and 20. In consideration for the termination of the Investigation, the Licensee agrees to the terms, conditions, and procedures contained herein, including the actions specified in paragraph 17.

15. The Bureau further 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.[22]

16. **Subsequent Investigations**. This Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by Licensee with the Rules or Act or from adjudicating complaints or other adjudicatory pleadings filed by third parties against the Licensee for alleged violations of the Communications Laws or for any alleged misconduct, regardless of when such misconduct took place. Further, except as expressly provided herein, Licensee acknowledges that the Commission and its delegated authority (including 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 Rules or Act. The Commission's adjudication of any complaints or potential violations of the Rules will be based solely on the record developed in subsequent proceedings.

17. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Fifty Three Thousand dollars ($53,000). **Licensee agrees that the civil penalty will be paid within fifteen (15) business days of the Closing Date.** It also acknowledges and agrees that upon

[21] 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. *See* 47 U.S.C. § 503(b)(2)(E); *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1 and Table 3.

[22] *See* 47 CFR § 1.93(b).

execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[23] **Licensee will send electronic notification of payment to Andrew Manley at Andrew.Manley@fcc.gov and David Brown at David.Brown@fcc.gov on the date said payment is made.** Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[24] or by wire transfer. Payments by check or money order are no longer accepted. Below are instructions that Licensee 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 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.

18. **Event of Default**. The Parties agree that an "Event of Default" shall occur upon the failure by Licensee to pay the full amount of the Civil Penalty on or before the due date specified in Paragraph 17. After an Event of Default has occurred under this Consent Decree, the unpaid amount of

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

[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.

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 Licensee.

19. **Grant of Assignment Applications**. In the Adopting Order, the Bureau has determined that grant of the Assignment Application is in the public interest, convenience, and necessity, and consistent with section 310(d) of the Act. The Bureau agrees to grant the Assignment Application concurrent with adoption of this Consent Decree and grant of the Renewal Application. **The Licensee agrees to consummate the Assignment Application within forty five (45) days of the Effective Date. Upon consummation of the transaction proposed in the Assignment Application, Licensee agrees to notify the Commission that consummation has occurred by filing a "Notice of Consummation" in the Commission's Licensing Management System (LMS) within two (2) business days.** The assignment authorization will be conditioned on compliance with all the terms and conditions of this Consent Decree, including the terms of Paragraph 17.

20. **Grant of Renewal Application**. In the Adopting Order, the Bureau has determined that grant of the Renewal Application is in the public interest, convenience, and necessity, and consistent with section 309(k)(2) of the Act. The Bureau agrees to grant the Renewal Application concurrent with adoption of this Consent Decree and grant of the Assignment Application. The license renewal authorization will be conditioned on compliance with all the terms and conditions of this Consent Decree, including the terms of Paragraphs 17 and 19.

21. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[27] relating to the matters addressed in this Consent Decree.

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

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

24. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order. A conflict will be considered to have arisen in the event that Licensee is unable to comply with both the terms and conditions of the Consent Decree and the Communications Laws, and compliance with the Consent Decree would result in a

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

violation of the Communications Laws.

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

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

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

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

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

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

_____
Barbara A. Kreisman
Chief, Video Division
Media Bureau

_____
Date

_____
George G. Duncan

_____
Date

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

In the Matter of	)	
	)	
AT&T Services Inc.	)	File No.: EB-TCD-23-00034851
	)	CD Acct. No.: 202432170008
	)	FRN: 0005193701
	)	
	)	

ORDER

Adopted: September 16, 2024 **Released: September 17, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) has entered into a Consent Decree to resolve its investigation into whether AT&T Services Inc. (AT&T or Company): (i) failed to meet its duty to protect the confidentiality of customer proprietary information (PI); (ii) improperly used, disclosed, or permitted access to individually identifiable customer proprietary network information (CPNI) without customer approval; (iii) failed to take reasonable measures to discover and protect against attempts to gain access to CPNI; and (iv) engaged in unjust and unreasonable privacy, cybersecurity, and vendor management practices in connection with a data breach of its vendor's cloud environment that occurred in January 2023 (the 2023 Breach). The 2023 Breach occurred when threat actors accessed the vendor's cloud environment and ultimately exfiltrated AT&T customer information that the Company had previously shared with the vendor. The vendor should have destroyed or returned that customer information years prior to the 2023 Breach pursuant to relevant contracts AT&T entered into with the vendor. AT&T failed to ensure its vendor adequately protected that customer information; instead, it remained in the vendor's cloud environment for many years after it should have been deleted or returned to AT&T and was ultimately exposed in the 2023 Breach.

2. In 2023, over 80 percent of data breaches involved data stored in the cloud.[1] Security researchers also singled out the telecommunications sector as the top industry target for cloud attackers in 2023.[2] Cloud misconfigurations and vendor systems were two of the three primary causes of data breaches of personal data in 2023.[3] Data stored in the cloud may become "an easy target" when companies "unintentionally misuse the cloud, such as allowing excessively permissive cloud access, having unrestricted ports, and use unsecured backups."[4] For years, the U.S. government has warned the public that "misconfiguration of cloud resources remains the most prevalent cloud vulnerability" that could be "exploited to access cloud data and services."[5] The growing privacy and cybersecurity risks

[1] Stuart Madnick, *Why Data Breaches Spiked in 2023,* Harvard Business Review (Feb. 19, 2024), https://hbr.org/2024/02/why-data-breaches-spiked-in-2023.

[2] Sysdig, *2023 Global Cloud Threat Report* at 7 (Aug. 2, 2023), https://sysdig.com/content/c/pf-2023-global-cloud-threat-report?x=u_WFRi.

[3] *See supra* note 1.

[4] *Id*.

[5] Nat'l Sec. Agency, *Mitigating Cloud Vulnerabilities* (Jan. 22, 2020), https://media.defense.gov/2020/Jan/22/2002237484/-1/-1/0/CSI-MITIGATING-CLOUD-VULNERABILITIES_20200121.PDF.

associated with cloud security and vendor security make the terms of this Consent Decree even more timely and necessary.

3. The Communications Act of 1934, as amended (Communications Act or Act),[6] and the Commission's rules require that carriers protect consumers' personal information from unauthorized access, use, or disclosure.[7] The Act further imposes vicarious liability on carriers for the acts, omissions, or failures of their agents acting within the scope of their employment.[8] Carriers are responsible for the acts of their agents and contractors.[9] The Commission expects carriers to meet the requirements of the Act and the Commission's rules,[10] including to take "every reasonable precaution" to protect customers' proprietary or personal information.[11] That includes reasonable practices as they relate to cloud security, data retention and disposal, and vendor oversight.

4. The failure to protect the confidentiality of customers' PI violates a carrier's statutory duty under the Act[12] to protect that information. Moreover, impermissibly using, disclosing, or permitting access to individually identifiable CPNI without customer approval, and failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI, violates a carrier's statutory duty under the Act and the requirements of the Commission's CPNI rules, respectively.[13] These failures also constitute an unjust and unreasonable practice in violation of the Act.[14]

5. To settle these matters, AT&T will pay a civil penalty of $13,000,000 and commit to robust terms of agreement to strengthen the Company's data governance practices to ensure appropriate processes and procedures are incorporated into AT&T's business practices to protect consumers' sensitive data against similar vendor data breaches in the future. Specifically, AT&T will be required to improve its privacy and data security practices by, among other things:

(i) **Broad Customer Information Protections:** protecting CPNI and other sensitive personal information pursuant to various terms in the Consent Decree with AT&T agreeing to limit vendor access to and disposal of such information;

(ii) **Comprehensive Information Security Program:** requiring an Information Security Program that is designed to protect the security, confidentiality, and integrity of AT&T customers' information, including CPNI and other sensitive personal information;

(iii) **Multifaceted Vendor Controls and Oversight:** engaging in due diligence when selecting vendors, requiring vendors to employ safeguards for customer information,

[6] 47 U.S.C. §§ 201(b), 222(a), 222(c).

[7] *See id.* § 222; 47 CFR § 64.2001 *et seq.*

[8] 47 U.S.C. § 217.

[9] AT&T is well-aware of this responsibility. *See AT&T, Inc.*, Notice for Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1759-61, paras. 45-49 (Feb. 28, 2020) (explaining that a carrier cannot avoid its statutory obligations by assigning them to a third party), *aff'd*, *AT&T Location Data Forfeiture Order*, 2024 WL 19052277, *18, para. 51 ("[W]e clearly explained that, pursuant to section 217 of the Act, carriers cannot disclaim their obligations to protect customer CPNI by delegating those obligations to third parties.").

[10] *See, e.g.*, 47 U.S.C. §§ 222, 201(b); 47 CFR § 64.2001, *et seq*.

[11] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959 at para. 64 n.198 (2007) (*2007 CPNI Order*) (citing 47 U.S.C. § 222(a)).

[12] 47 U.S.C. §222(a).

[13] *See id*. § 222(c); 47 CFR § 64.2010(a).

[14] 47 U.S.C. § 201(b).

limiting vendor access to and storage of customer information, and conducting enhanced vendor oversight;

(iv) **Data Inventory Program:** enhancing the Company's data inventory processes to track AT&T customers' data shared with vendors, allowing AT&T to act more swiftly to protect customer data in the future;

(v) **Data Retention and Disposal**: requiring vendors to adhere to retention and disposal obligations related to customer information, to limit the quantity of customer information vulnerable to breach; and

(vi) **Annual Compliance Audits:** conducting annual compliance audits to evaluate AT&T's compliance with the Consent Decree, including the information security and vendor information security requirements listed above.

6. Implementing the terms contained in this Consent Decree will require AT&T to make significant investments in, and prioritize, the safeguarding of customers' information shared with third parties. Given AT&T's size, number of customers, and extensive use of vendors, this will likely require expenditures far greater than the civil penalty herein. The Commission will hold AT&T accountable for making these mandatory changes to its data protection practices, as required to comply with this Consent Decree, the Communications Act, and the Commission's rules going forward. The Commission long ago determined—and was affirmed by the U.S. Court of Appeals for the D.C. Circuit on "common sense" grounds—that the "risk of unauthorized disclosure of customer information increases with the number of entities possessing it."[15] Companies that choose to share their customers' data with vendors must act as responsible stewards and hold their vendors responsible for protecting that data as required by the Communications Act and the Commission's rules.

7. 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 AT&T's compliance with sections 201(b), 222(a) and (c) of the Act,[16] and section 64.2010(a) of the Commission's rules.[17]

8. In the absence of material new evidence relating to this matter, we do not set for hearing the question of AT&T's basic qualifications to hold or obtain any Commission license or authorization.[18]

9. 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 U.S.C. §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

[15] *NCTA v. FCC*, 555 F.3d 996, 1001-02 (D.C. Cir. 2009) ("[C]ommon sense supports the Commission's determination that the risk of unauthorized disclosure of customer information increases with the number of entities possessing it."), *aff'g 2007 CPNI Order,* 22 FCC Rcd at 6951, para. 46 ("[I]nformation security breaches are on the rise in this country, and it is axiomatic that the more companies that have access to CPNI, the greater the risk of unauthorized disclosure through disclosure by insiders or computer intrusion.").

[16] 47 U.S.C. §§ 201(b), 222(a), (c).

[17] 47 CFR § 64.2010(a).

[18] *See id.* § 1.93(b).

11. **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 Glenis McKoy, AT&T Services Inc., 601 New Jersey Ave NW, Suite 650, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
AT&T Services Inc.	)	File No.: EB-TCD-23-00034851
	)	CD Acct. No.: 202432170008
	)	FRN: 0005193701
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and AT&T Services Inc. (AT&T or the Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether AT&T violated sections 201(b) and 222 of the Communications Act of 1934, as amended (Communications Act or Act),[1] and section 64.2010(a) of the Commission's Rules[2] in connection with a January 2023 data breach of a vendor's cloud environment (January 2023 breach).[3]

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.

(b) "AT&T" means AT&T Services, Inc., and its affiliates, subsidiaries, and successors-in-interest.

(c) "Authorized Retailer" means an entity whose responsibilities include performance of services to sell AT&T products and services to end users and that involve the collection, transmission, processing, access to, use, disclosure, storage, or protection of Covered Data, pursuant to a contractual relationship or agreement with AT&T, provided that Authorized Retailer shall not include any wholesale customer or reseller of AT&T products and services.

(d) "Breach" means when a person, without authorization or exceeding authorization, gains access to, uses, or discloses CPNI. A breach shall not include a good-faith acquisition of CPNI by a Vendor, employee, or agent of AT&T where such information is not used improperly or further disclosed.

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

(f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 22.a.

(g) "Covered Data" means CPNI and Sensitive Personal Information.

(h) "Covered Employees" means all employees and agents of AT&T whose responsibilities include performance, direct supervision, oversight, or management

[1] 47 U.S.C. §§ 201, 222.

[2] 47 CFR § 64.2010(a).

[3] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

of the performance of duties involving the collection, transmission, processing, access to, use, disclosure, storage, or protection of Covered Data, or any duties pursuant to the Privacy and Security Requirements. Covered Employees do not include Covered Vendor Employees.

(i) "Covered Vendor Employees" means all employees and agents of any Vendor whose responsibilities include performance of services involving the collection, transmission, processing, access to, use, disclosure, storage, or protection of Covered Data, or any duties pursuant to the Privacy and Security Requirements.

(j) "CPNI Rules" means the rules set forth at 47 CFR §64.2001 *et seq.* and any amendments or additions to those rules subsequent to the Effective Date.

(k) "Customer" means a current or former customer of AT&T.

(l) "Customer Proprietary Network Information" and "CPNI" shall have the meaning set forth at Section 222(h)(1) of the Act.

(m) "Effective Date" means the date by which both the Bureau and AT&T have signed the Consent Decree.

(n) "Investigation" means the investigation commenced by the Bureau in EB-TCD-23-00034851.

(o) "Privacy and Security Requirements" means the requirements of section 222 of the Act, as well as the CPNI Rules.

(p) "Sensitive Personal Information" or "SPI" shall mean the categories of information identified as Sensitive Personal Information as of August 6, 2024, in the AT&T Privacy Notice at https://about.att.com/privacy/privacy-notice/state-disclosures.html#sensitive-personal-info.

(q) "Vendor" means any Authorized Retailer, or person or entity subject to the contracting processes managed by AT&T's Global Supply Chain organization, whose responsibilities include performance of either services involving the collection, transmission, processing, access to, use, disclosure, storage, or protection of Covered Data, or any duties pursuant to the Privacy and Security Requirements.

II. BACKGROUND

3. *Legal Framework.* The Act and Commission's Rules govern and limit telecommunications carriers' use and disclosure of certain customer data. Through section 222 of the Act, Congress established a framework for governing telecommunications carriers' use and protection of information received or obtained by virtue of providing a telecommunications service. Section 222(a) imposes on telecommunications carriers a general "duty to protect the confidentiality of proprietary information of, and relating to, . . . customers."

4. Section 222(c) establishes specific privacy requirements for "customer proprietary network information" or CPNI. This includes information relating to the "quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" and that is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."[4] It also includes "information contained in the bills pertaining to" telephone service "received by a customer of a carrier," except for subscriber list information.[5]

[4] 47 U.S.C. § 222(h)(1)(A).

[5] 47 U.S.C. § 222(h)(1)(B).

5. The Commission has adopted the CPNI Rules that implement the privacy requirements of section 222.[6] Section 64.2010 of the CPNI Rules, which the Commission adopted in its 2007 CPNI Order,[7] articulates safeguards that carriers must implement to protect CPNI.[8] Section 64.2010(a) requires carriers to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."[9] In adopting section 64.2010(a), the Commission declined to adopt prescriptive security practices.[10] Instead, it "allow[ed] carriers to determine what specific measures will best enable them to ensure compliance with the requirement" and "permit[ted] carriers to weigh the benefits and burdens of particular methods" to "allow carriers to improve the security of CPNI in the most efficient manner possible."[11]

6. Additionally, section 201(b) of the Act sets forth the overarching obligation that common carriers' practices be "just and reasonable" and declares unlawful any practice that is unjust or unreasonable.[12]

7. *Factual Background.* AT&T is a telecommunications carrier that provides mobile voice and data services to customers throughout the United States, with its principal place of business in Dallas, Texas.[13] AT&T is one of the largest wireless carriers in the United States, with 241.5 million wireless subscribers, earning $122.4 billion in operating revenue in 2023.[14] AT&T provides these wireless services through its wholly-owned subsidiary, AT&T Mobility LLC (AT&T Mobility).[15]

8. In January 2023, an AT&T vendor, {[ ]} (Vendor X), suffered a data breach that exposed information related to 8,931,656 AT&T Mobility customers.[16] AT&T reported the January 2023 breach to the Data Breach Reporting Portal[17] on February 7, 2023,[18] and filed a supplemental submission on May 15, 2023.[19] Based on AT&T's report, the Bureau opened its

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[6] 47 CFR §§ 64.2001-64.2011.

[7] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6945-46, para. 34 (2007) (*2007 CPNI Order*)).

[8] 47 CFR § 64.2010.

[9] 47 CFR § 64.2010(a).

[10] *See 2007 CPNI Order*, 22 FCC Rcd at 6945-46, para. 34.

[11] *Id.*

[12] 47 U.S.C. § 201(b).

[13] *See* AT&T Inc., *SEC Form 8-K* (Jan. 24, 2024), https://investors.att.com/~/media/Files/A/ATT-IR-V2/financial-reports/quarterly-earnings/2023/4q-2023/ATT_4Q_2023_8_K_Earnings_8_01.pdf [https://perma.cc/XAD4-666Y].

[14] *See id*.

[15] *See* AT&T Inc., *2023 Annual Report and SEC Form 10-K* (Feb. 23, 2024), https://investors.att.com/~/media/Files/A/ATT-IR-V2/financial-reports/annual-reports/2023/2023-complete-annual-report.pdf [https://perma.cc/NX4S-ARWD].

[16] *See* Supplemental Response to Initial Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau at 1, Response to Inquiry 2 (on file in EB-TCD-23-00034851) (Supplemental Response to Initial LOI).

[17] Telecommunications carriers are required to report CPNI breaches through the online portal at https://www.cpnireporting.gov. *See* 47 CFR § 64.2011(b). The data reported through the portal is collected by the U.S. Secret Service and the Federal Bureau of Investigation.

[18] FBI/USSS CPNI Data Breach Reporting Portal Report 2023-775 (Feb. 7, 2023).

[19] FBI/USSS CPNI Data Breach Reporting Portal Report 2023-3326 (May 15, 2023).

investigation into the incident, issuing letters of inquiry[20] to AT&T and subpoenas[21] to Vendor X, and meeting with representatives from both companies. AT&T and Vendor X responded to these inquiries.[22]

9. *AT&T-Vendor X Relationship*. AT&T utilized Vendor X to generate and host personalized video content for AT&T customers, including billing and marketing videos.[23] AT&T shared certain customer information with Vendor X as part of the relationship and in order to receive Vendor X's services.[24] Such information included some elements of CPNI, as well as other customer information.[25]

10. The operative agreements[26] governing the business relationship between AT&T and Vendor X outlined the services that Vendor X would provide to AT&T and articulated Vendor X's

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[20] *See, e.g.*, Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to AT&T Services, Inc. (Feb. 17, 2023) (on file in EB-TCD-23-00034851); Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to AT&T Services, Inc. (Oct. 6, 2023) (on file in EB-TCD-23-00034851); Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to AT&T Services, Inc. (May 30, 2023) (on file in EB-TCD-23-00034851).

[21] *See, e.g.*, Subpoena from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Vendor X (Apr. 25, 2023) (on file in EB-TCD-23-00034851); Subpoena from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Vendor X (Nov. 8, 2023) (on file in EB-TCD-23-00034851); *see also* Letter from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Vendor X (Feb. 9, 2024) (2024 Letter) (on file in EB-TCD-23-00034851).

[22] *See, e.g.,* Response to Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (May 10, 2023) (on file in EB-TCD-23-00034851); Supplemental Response to Initial Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (on file in EB-TCD-23-00034851); Response to Supplemental Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Dec. 5, 2023) (on file in EB-TCD-23-00034851); Response to Supplemental Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Jun. 28 2024) (on file in EB-TCD-23-00034851); Response to Subpoena, from Vendor X, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Jun. 23, 2023) (on file in EB-TCD-23-00034851); Response to Supplemental Subpoena, from Vendor X, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Dec. 14, 2023) (on file in EB-TCD-23-00034851); Response to Supplemental Subpoena, from Vendor X, to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Dec. 21 2023) (on file in EB-TCD-23-00034851); Response to 2024 Letter, from Vendor X to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau (Feb. 16 2024) (on file in EB-TCD-23-00034851).

[23] *See* Initial LOI Response at 5, Response to Inquiry 5(a). In addition, Vendor X provided device upgrade videos, bill summary and explanation videos, "Welcome to Uverse" videos for new customers of AT&T Uverse products, and new wireless device onboarding services. *Id*.

[24] *See* Initial LOI Response at 5, Response to Inquiry 5(a).

[25] *See id*. at 5, Response to Inquiry 4(k)-4(l); Response to Supplemental Letter of Inquiry, from AT&T Services, Inc., to Shana Yates, Deputy Chief, Telecommunications Consumers Division, et al., FCC Enforcement Bureau at 9, Response to Inquiries 10(a) and 10(d) (Dec. 5, 2023) (on file in EB-TCD-23-00034851) (Supplemental LOI Response). More specifically, the billing information implicated by the January 2023 breach includes: past due balances, balance due, payments, monthly recurring charges, usage information, foundation account numbers; the plan type information includes plan type, name, and features. *See* Initial LOI Supplemental Response at 1, Response to Inquiry 4(f).

[26] The agreements that governed the customer information exposed in the January 2023 breach included {[ ]} between AT&T and Vendor X, as well as {[ ]} between AT&T and {[ ]} (Supplier 1), to which Vendor X subcontracted. Supplier 1 was required to bind all subcontractors, including Vendor X, to the terms of its master agreements with AT&T. *See* Initial LOI Response at 6, Response to Inquiry 5(c).

obligations as they related to AT&T's customers' information. AT&T required Vendor X to meet specific requirements with regard to use, protection, and eventual return or disposal of AT&T customer information. In particular, the relevant agreements required that AT&T's customer data be deleted, destroyed, or returned—either upon expiration or termination of the agreement[27] or when the data was no longer necessary to fulfill contractual obligations.[28]

11. Vendor X was also subject to AT&T's Supplier Information Security Requirements (SISR),[29] which included encryption requirements, access control requirements, and network oversight requirements.[30] Through the SISR, AT&T could assess Vendor X's security practices, including through supplier self-attestation reviews and technical assessments.[31] AT&T stated that, through its supplier monitoring processes, AT&T specifically asks suppliers whether all AT&T records in their possession have been or will be destroyed in accordance with applicable contracts.[32]

12. AT&T shared certain customer CPNI and other customer information with Vendor X, including the customer information exposed in the January 2023 breach.[33] According to AT&T, regardless of which operative agreement governed, the customer information exposed in the January 2023 breach should have been securely destroyed or deleted in 2017 or 2018.[34] AT&T performed multiple reviews and assessments of Vendor X and Supplier 1 between 2016 and 2020.[35] In response to such inquiries, Vendor X and Supplier 1 both stated that they were destroying data in accordance with their respective agreements.[36]

13. *January 2023 breach*. Between January 1 and January 8, 2023, threat actors gained unauthorized access to AT&T customer information.[37] The threat actor accessed and exfiltrated AT&T's

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[27] ATT_SS_LOI_00000480, {[ ]} the underlying terms regarding protection, disclosure, and return/destruction of customer information remained in place. *See* ATT_SS_LOI_00000517, Agreement No. 20110824.054.A.001 (2015); ATT_SS_LOI_00000470, Agreement No. 20110824.054.A.002 (2015); ATT_SS_LOI_00000477, Agreement No. 2011824.054.A.003 (2016), ATT_SS_LOI_00000473, Agreement No. 11497.A.003 (2017) (collectively, {[ ]}.

[28] Initial LOI Response at 6, Response to Inquiry 5(c) ("Accordingly, . . . [Vendor X] and/or [Supplier 1] were legally required to securely destroy or return each of the data sets accessed in the [Vendor X] Incident"). *See also,* ATT_SS_LOI_00000069 at 00000125, Software and Professional Services Agreement No. 54258.C, Section 3.38, "Ownership of AT&T Data and AT&T Derived Data"; ATT_SS_LOI_00000256 at 00000320-321, AT&T Agreement No. 53258.A.005, Section 3.38, "Ownership of AT&T Data and AT&T Derived Data".

[29] *See* Initial LOI Response at 19-20, Response to Inquiry 29(c).

[30] AT&T's SISR is a continually updated set of requirements that govern the treatment of customer information by AT&T's suppliers and vendors. The SISR required encryption of a range of confidential or proprietary data and information, and these encryption requirements did not change in updates made to the SISR during the contract period. *See* Supplemental LOI Response at 6, Response to Inquiry 4; *see also* ATT-SS-LOI-00000193 at 00000198, Amendment 2 to Agreement No. 53258.C; ATT_SS_LOI_00000517 at 00000518, {[ ]}.

[31] *See* Initial LOI Response at 19, Response to Inquiry 29(c).

[32] Supplemental LOI Response at 3-4, Response to Inquiry 2(a).

[33] *See* Initial LOI Response at 6, Response to Inquiry 5(c).

[34] *See id*.

[35] Supplemental LOI Response at 3-4, Response to Inquiry 2(a).

[36] *Id.*; *see also*, *e.g.*, ATT_SS_LOI_00005799 (Rows 19, 20), ATT_SS_LOI_00005800 (Rows 45, 46), ATT_SS_LOI_00005801 (Rows 26, 64, and 65).

[37] *See* Initial LOI Response at 2-3, Response to Inquiry 1; ATT_SS_SLOI_00002780, {[ ]} (Forensic Report).

customers' data.[38] AT&T notified Vendor X of the suspected attack on Vendor X's systems on January 6, 2023.[39] The underlying vulnerability was fixed on January 6, 2023, and the forensic investigation did not identify any additional unauthorized activity after January 8, 2023.[40]

14. According to AT&T, the exposed data was shared with Vendor X during the period of 2015 to 2017.[41] The affected data included discrete elements of CPNI (line count for all impacted customers, and bill balance and payment information and rate plan name and features for approximately one percent of impacted customers) and other customer information.[42] While not every customer had each type of data exposed, the January 2023 breach involved 8,931,656 AT&T Mobility customers.[43] AT&T stated that it monitored impacted customer accounts following the incident and identified no evidence of AT&T account-related fraud or other unlawful or unauthorized activity tied to the Breach.[44] According to AT&T, porting, SIM swap, and equipment fraud rates for impacted customers following the incident were consistently less than the rates for the general population of AT&T Mobility customers across all account types.[45]

15. To resolve this matter, the Parties negotiated the following terms and conditions of settlement and enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

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

17. **Jurisdiction**. AT&T 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.

18. **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.

19. **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, AT&T 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 AT&T concerning the matters that were the subject of the investigation or to set for hearing the question of AT&T basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the investigation.[46]

20. **Admission**. AT&T admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 19 herein, that

[38] *See* Initial LOI Response at 2-3, Response to Inquiry 1; ATT_SS_SLOI_00002780, Forensic Report at 4-5.

[39] *See* Initial LOI Response at 2, Response to Inquiry 1.

[40] *See* ATT_SS_SLOI_00002780, Forensic Report at 4-5.

[41] *See* Initial LOI Response at 5, Response to Inquiry 5(b).

[42] *See id.* at 2, Response to Inquiry 1.

[43] *See* Supplemental Response to Initial LOI at 1, Response to Inquiry 2.

[44] *See* Initial LOI Response at 7-8, Response to Inquiry 7; *see also id.* at 12, Response to Inquiry 14.

[45] *Id.* at 7-8, Response to Inquiry 7.

[46] *See* 47 CFR § 1.93(b).

paragraphs 7-14 contain a true and accurate description of the facts underlying the Investigation. No other admissions are made by AT&T.

21. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, AT&T 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 AT&T complies with the terms and conditions of the Compliance Plan and this Consent Decree.

(a) In addition to the general knowledge of the Privacy and Security Requirements necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the information security principles and practices necessary to implement the requirements of this Consent Decree, and the Privacy and Security Requirements, before assuming his/her duties. The Compliance Officer or managers reporting to the Compliance Officer with responsibilities related to this Consent Decree shall be privacy certified by an industry certifying organization and keep current through appropriate continuing privacy education courses or otherwise demonstrate they have equivalent privacy experience through relevant experience.

22. **Compliance Plan and Manual**.

(a) *Compliance Plan*

i. AT&T must, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure compliance with the terms and conditions of this Consent Decree and the CPNI Rules related to such compliance.

(b) *Compliance Manual*

i. The Compliance Officer shall, within one-hundred and twenty (120) calendar days after the Effective Date, develop and maintain a Compliance Manual.

ii. The Compliance Manual shall explain the terms and conditions of this Consent Decree and the CPNI Rules related to such compliance. The Compliance Plan shall set processes and procedures that Covered Employees and Vendors shall follow to ensure AT&T's compliance.

iii. AT&T shall review the Compliance Manual periodically and revise it as necessary to ensure that the information set forth therein remains current and accurate.

(c) *Compliance Manual Distribution*

i. The Compliance Officer shall, within one-hundred and twenty (120) calendar days after the Effective Date, distribute the Compliance Manual to all Covered Employees.

ii. For any future Covered Employees, the Compliance Officer shall distribute the Compliance Manual within thirty (30) calendar days after such future Covered Employee assumes their position or responsibilities.

iii. The Compliance Officer shall, within one-hundred and twenty (120) calendar days after the Effective Date, distribute to all Vendors the Compliance Manual with instructions to Vendors to distribute a copy of the Compliance Manual to all Covered Vendor Employees within thirty (30)

calendar days, and to certify that such distribution has been completed. If such certification is not provided, AT&T will timely pursue appropriate remedies available, including contractual remedies and, if necessary, termination of the relationship, consistent with the sensitivity of the Covered Data processed by the Vendor as well as the nature of the relationship between the Vendor and AT&T to require distribution and certification.

iv. Additionally, AT&T shall instruct all Vendors to deliver a Compliance Manual to all future Covered Vendor Employees within thirty (30) calendar days after such future Covered Vendor Employee assumes such position or responsibilities.

v. AT&T shall distribute any revisions to the Compliance Manual to all Covered Employees and all Vendors within thirty (30) calendar days of making such revisions.

(d) *Compliance Training Program*

i. AT&T shall establish and implement, or revise as necessary to comply with this Consent Decree, a Compliance Training Program regarding compliance with the Privacy and Security Requirements and the requirements of this Consent Decree. As part of the Compliance Training Program, Covered Employees shall be advised of AT&T's reporting obligations under Paragraph 28 of this Consent Decree and shall be instructed on how to disclose noncompliance with the Consent Decree to the Compliance Officer or his/her designees.

ii. All Covered Employees shall be trained pursuant to the Compliance Training Program within six (6) months after the Effective Date, and 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. AT&T 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.

iii. AT&T shall request and, where permitted by contract, require all Vendors to provide the training to all Covered Vendor Employees within six (6) months after the Effective Date, except that any person who becomes a Covered Vendor 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 Vendor Employee. AT&T shall request and, where permitted by contract, require Vendors to repeat compliance training on an annual basis.

23. **Information Security Program**. Within ninety (90) calendar days after the Effective Date, AT&T shall implement, or revise as necessary to comply with this Consent Decree, and thereafter maintain and document, a comprehensive Information Security Program that is reasonably designed to protect the security, confidentiality, and integrity of Covered Data from unauthorized access, use, or disclosure (the Information Security Program). AT&T's Information Security Program must be consistent with principles identified by applicable laws and must consider relevant standards, including, but not limited to, the National Institute of Standards and Technology (NIST) Cybersecurity Framework. At least once every six (6) months, AT&T must review and update the Information Security Program as reasonably necessary. At a minimum, AT&T's Information Security Program must address the following:

(a) Administrative, technical, and physical safeguards, from internal and external risks, that:

i. are based on the volume and sensitivity of the Covered Data at risk; and

ii. are reasonably designed to protect the security, confidentiality, and integrity of Covered Data.

(b) The following reasonable measures to protect Covered Data maintained by or made available to Covered Employees, Vendors, and Covered Vendor Employees:

i. the exercise of due diligence in selecting Vendors capable of reasonably safeguarding Covered Data;

ii. requiring Vendors in writing to implement and maintain administrative, technical, and physical safeguards for the protection of Covered Data;

iii. access controls reasonably designed to limit access to Covered Data to authorized Covered Employees, Vendors, and Covered Vendor Employees;

iv. reasonable limitations on the storage and sharing of Covered Data to that which is reasonably necessary to achieve current business requirements;

v. a comprehensive Breach response plan that will enable AT&T to fulfill its Breach notification obligations under applicable laws; and

vi. timely remediation of critical and high-risk security vulnerabilities related to Covered Data.

(c) A Vendor information security program to require a written certification, consistent with the Vendor information security standards, regarding secure destruction or return of Covered Data that is no longer reasonably necessary to achieve current business requirements, and incorporating the Vendor oversight benchmarks; and

(d) A data inventory program consisting of requirements to enhance data inventory processes reasonably designed to track AT&T Covered Data and to make reasonable efforts to populate and maintain data inventories to track AT&T Covered Data created or stored by AT&T, or transferred to a Vendor.

24. **Vendor Oversight**.

(a) AT&T shall engage in ongoing monitoring of Vendors' compliance with AT&T's data security obligations using assessments, reviews, and other oversight. AT&T shall implement, or revise as necessary to comply with this Consent Decree, measures to sanction Vendors that fail to comply with such data security obligations (including, where appropriate and based on information available to AT&T at the time, terminating AT&T's relationship with such parties).

i. Within nine (9) months of the Effective Date, AT&T shall take reasonable steps to require Vendors to identify Covered Data that is no longer reasonably necessary to achieve current business requirements.

ii. Within six (6) months of the Effective Date, AT&T shall establish, or revise as necessary to comply with this Consent Decree, and thereafter maintain, its Vendor information security program, consistent with the requirements of this section. The Vendor information security program shall be documented in the Compliance Manual and include, at a minimum, Vendor information security standards and benchmarks for Vendor oversight.

(b) *Vendor information security standards.* AT&T will establish, or revise as necessary to comply with this Consent Decree, information security standards for Vendors in

the Compliance Manual, consistent with the Information Security Program. Such standards will require, at a minimum:

i. compliance with all Consent Decree requirements applicable to Vendors;

ii. compliance with AT&T Supplier Information Security Requirements ("SISR");

iii. compliance with data retention and disposal requirements; and

iv. certification of compliance with Consent Decree requirements; SISR; and data retention and disposal requirements, with such certification to occur at intervals designated by AT&T but no less than annually.

(c) *Vendor oversight benchmarks*. AT&T will perform assessments, reviews, and other oversight of Vendor compliance with the Vendor information security standards. AT&T will take into account risks posed to the security of Covered Data when determining the level of assessment review or other oversight for each Vendor. AT&T will ensure that assessments and reviews satisfy minimum volume benchmarks, including a minimum of twenty percent (20%) of Vendors each year, inclusive of assessments or reviews of:

i. all new Vendors on or before twelve (12) months of initial contracting date and thirty-six (36) months of initial contracting date, provided that the latter engagement is required only to the extent the Vendor's engagement remains active for a continuous period of more than 36 months;

ii. any Vendor that experiences a Breach, which, unless terminated, shall promptly be subject to an assessment or review following the Breach; and

iii. any Vendor that does not conform with the Vendor information security standards, which, unless terminated, shall be subject to annual assessments or reviews for a period of at least three (3) years.

25. **Data Inventory Program**. AT&T shall take steps to enhance its data inventory processes as part of a Data Inventory Program reasonably designed to track AT&T Covered Data that is: (i) contained in AT&T's networks, systems, and assets; and (ii) transferred or otherwise made available to a Vendor. In connection with such enhancement, AT&T shall document and maintain policies, procedures, standards, and technical measures applicable to data inventories. AT&T shall make reasonable efforts to complete such process enhancements within two (2) years of the Effective Date, after which AT&T will make reasonable efforts to populate and maintain the inventories to track AT&T Covered Data created or stored, or transferred or otherwise made available to a Vendor, on or after such date.

26. **Data Retention and Disposal**.

(a) AT&T must require Vendors to retain Covered Data only as reasonably necessary to accomplish AT&T's current business requirements for sharing such information or as otherwise required by law.

(b) AT&T must require Vendors to adhere to requirements regarding data retention for Covered Data that are consistent with AT&T's internal retention policies and schedules. Such requirements must set forth a set time frame or other criteria for deletion of such Covered Data.

(c) AT&T must obtain a written certification of such deletion, disposal, or return from the relevant Vendor consistent with Paragraph 24.b.iv, above.

27. **Compliance Audits**.

(a) *Compliance Audits*.

i. AT&T shall conduct annual compliance audits to evaluate AT&T's compliance with this Consent Decree (the "Compliance Audits").

ii. Such Compliance Audits shall consider, at a minimum, the compliance of applicable business units with the requirements and operating procedures set forth in the Compliance Manual; the Information Security Program requirements; the requirements set forth in the Vendor Oversight, Data Inventory Program, and Data Retention and Disposal sections of this Consent Decree.

28. **Reporting Noncompliance**. AT&T shall report any material noncompliance with the terms and conditions of this Consent Decree within thirty (30) calendar days of such noncompliance. Such reports shall include a detailed explanation of: (i) each known instance of noncompliance; (ii) the steps that AT&T has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) steps that AT&T has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, with copies submitted electronically to Shana.Yates@fcc.gov, Kimbarly.Taylor@fcc.gov, Lauren.Merk@fcc.gov, Samuel.Hanks@fcc.gov and EB-TCD-Privacy@fcc.gov.

29. **Compliance Reports**.

(a) AT&T shall file compliance reports with the Commission six (6) months after the Effective Date, twelve (12) months after the Effective Date, and then annually on the anniversary of the Effective Date for the term of this Consent Decree.

(b) Each Compliance Report shall include:

i. A detailed description of AT&T's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of AT&T, stating that the Compliance Officer has personal knowledge that AT&T: (i) has established and implemented the Compliance Plan required by Paragraph 22.a of the Consent Decree; (ii) has utilized the Information Security Program since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 28 of this Consent Decree.

ii. The Compliance Officer's certification described in Paragraph 29.b.i, above, 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.[47]

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

[47] 47 CFR § 1.16.

recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, with copies submitted electronically to Shana.Yates@fcc.gov, Kimbarly.Taylor@fcc.gov, Lauren.Merk@fcc.gov, Samuel.Hanks@fcc.gov, and EB-TCD-Privacy@fcc.gov.

30. **Termination Date**. Unless otherwise indicated, the requirements set forth in this Consent Decree shall expire three (3) years after the Effective Date.

31. **Section 208 Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act[48] against AT&T or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by AT&T with the Communications Laws.

32. **Civil Penalty**. AT&T will pay a civil penalty to the United States Treasury in the amount of $13,000,000 within thirty (30) calendar days of the Effective Date.

AT&T acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[49] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. AT&T shall send electronic notification of payment to Kimbarly.Taylor@fcc.gov and EB-TCD-Privacy@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[50]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[51] or printed CORES form[52] 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

[48] 47 U.S.C. § 208.

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

[50] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

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

(Payor FRN).[53] 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.

33. **Event of Default**. AT&T agrees that an Event of Default shall occur upon the failure by AT&T to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

34. **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 AT&T.

35. **Waivers**. As of the Effective Date, AT&T 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. AT&T 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 AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T shall waive any statutory right to a trial *de novo*. AT&T hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[54] relating to the matters addressed in this Consent Decree.

36. **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

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

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

containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

37. **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.

38. **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, such Rule or Order shall take precedence, provided that such Rule or Order becomes and is effective, but excluding any Order specifically intended to revise the terms of this Consent Decree to which AT&T does not expressly consent.

39. **Successors and Assigns**. AT&T agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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

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

42. **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.

43. **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.

44. **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

_____
Andy Markus
Senior Vice President – Data & Artificial Intelligence, Chief Data Officer
AT&T Services, Inc.

_____
Date

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

In the Matter of	)	
	)	
HAGERMAN TRANSLATOR DISTRICT	)	Facility ID No. 25823
	)	NAL/Acct. No. 202441420015
Application for License to Cover for Television	)	FRN: 0003776119
Translator Station K49IT-D, Hagerman, ID	)	LMS File No. 0000245215

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 9, 2024 **Released: September 9, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the application (Application) of Hagerman Translator District ("HTD" or "Licensee"), for license to cover television translator (TV translator) station K49IT-D, Hagerman, Idaho (K49IT-D or Station).[1] Also before the Division is HTD's petition for reconsideration (Petition) of the cancellation of the Station's displacement construction permit.[2] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find that HTD apparently willfully violated section 73.3598(a)[3] of the Commission's rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745(a) of the Rules[4] and section 301 of the Communications Act of 1934, as amended (Act),[5] by engaging in unauthorized operation of the Station after its construction permit had expired. Based upon our review of the facts and circumstances before us, we conclude that HTD is apparently liable for a monetary forfeiture in the amount of one thousand dollars ($1,000). We also, *sua*

[1] LMS File Nos. 0000245215 amended May 23, 2024 (Application). Following grant of the Application the Station's new call sign will be K18NF-D. For clarity, we shall continue to refer to the Station by its former call sign.

[2] *See* Petition for Reconsideration of Hagerman Translator District (May 21, 2024) on file at LMS Pleading File No. 0000245093 (Petition). The Petition was submitted as an exhibit to the Application. *See* LMS File No. 0000054644 (Displacement CP).

[3] 47 CFR § 73.3598(a). At the time the station should have filed its license to cover application, 47 CFR § 74.788 was the controlling rule for TV translator stations relating to construction and the requirement to file a license to cover. Effective October 24, 2022, 47 CFR § 74.788 (2022) was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598. *See* 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173 (2022); 47 CFR § 74.780(bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). To the extent necessary, we also find that the Licensee violated 47 CFR § 74.788 (2022).

[4] 47 CFR § 73.1745(a).

[5] *See* 47 U.S.C. § 301.

sponte, grant a waiver of section 73.3598(e) of the Rules,[6] reinstate the Station's construction permit, accept the Station's Application for filing, and will act upon the stations Application by separate Division staff action.

II. BACKGROUND

2. The Station is TV translator station whose channel 49 facilities were displaced by the Incentive Auction and repacking process. HTD obtained the Displacement CP to relocate from channel 49 to channel 18 with an expiration date of September 27, 2021. The Station failed to file a license to cover upon completion of the Station's facility and prior to the Displacement CP's expiration date. The Displacement CP was automatically forfeited on September 28, 2021. According to HTD, the Station completed its displacement facilities and began operating on channel 18 on January 25, 2019.[7]

3. On May 23, 2024, more than two and a half years after the Displacement CP was forfeited and more than five years after construction was completed, HTD late-filed the Application and its Petition seeking reinstatement of the expired Displacement CP and grant of the Application.[8] In its Petition, HTD explains that the Application was late-filed because, at the time the Displacement CP facilities were completed, "there was a different consulting firm being used to manage FCC filings and there was an apparent failure to communicate the construction … and subsequent filing of license to cover construction application."[9] HTD has provided documentary evidence that the Station was constructed at that time and that it has been operating continuously ever since.[10]

4. HTD argues that the Commission has recognized that automatic forfeiture of the authorization of an operating station is a severe penalty which the Commission has been reluctant to impose absent an egregious violation of its rules.[11] HTD states that the community of Hagerman, Idaho (Hagerman) is a small community of less than 1,000, nestled in a valley on the Snake River in south central Idaho and that it depends on the Station to provide the community over the air television that rebroadcasts television programming, including network affiliates, from Twin Falls, Idaho (Twin Falls).[12] Due to terrain shielding the stations that are rebroadcast by HTD from Twin Falls, which is located approximately 30 miles away, are not receivable in Hagerman without the use of a TV translator station. Therefore, if the license of the Station were canceled, viewers in the Station's service area would be left

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[6] 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."). *See supra* note 3.

[7] Petition at 1.

[8] We note that because the Displacement CP had not yet been cancelled in the Commission's Licensing and Management System (LMS), the Station was able to file a license to cover application against its expired permit. Cancellation of a station's forfeited construction permit by Bureau staff in LMS is an administerial function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. *See Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Oher Important Deadlines are One Week Away*, Public Notice, 36 FCC Rcd 10364 (MB 2021); 47 CFR § 73.3598(e); 47 CFR § 74.788(b) (2022). As a result, failure by Bureau staff to cancel a forfeited construction permit in LMS does not result in an expired construction permit remaining valid. We note that, at the time the Displacement CP expired, 47 CFR § 74.788 was the controlling rule for TV translator stations relating to construction and the requirement to file a license to cover. Effective October 24, 2022, 47 CFR § 74.788 (2022) was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598. *See supra* note 3..

[9] Petition at 2.

[10] *Id.* at Exhibits.

[11] *Id.* at 2 citing *Letter to Richard Swift et. al. (KXFT- FM, Manson, Iowa)*, 24 FCC Red 13483 (Audio Division, 2009).)

[12] *Id.* at 2. HTD operates four TV translators in Hagerman that rebroadcast network affiliated programming: K49IT-D (NBC); K31F-D (CBS/Fox); K25OX-D (PBS); and K29GV-D (ABC).

without access to the station being rebroadcast by K49IT-D.[13] In its Petition, HTD provided documentary evidence that the Station was constructed in January 2019, as it contends, and that the Station has been operating continuously ever since. As part of its Petition, HTD also includes copies of its most recent financial statements showing its revenues and expenditures for the past three years.[14] HTD concludes that it would be in the public interest to forgive the failure to file for a license to cover and to grant its petition for reconsideration to permit the Station to continue to operate and serve the public.[15]

III. DISCUSSION

5. *Notice of Apparent Liability*. Pursuant to section 503(b)(1)(B) of the Act,[16] 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.[17] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[18] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[19] and the Commission has so interpreted the term in the section 503(b) context.[20] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[21]

6. *Apparent Violation*. HTD admits that it failed to timely file a license to cover as required by section 73.3598(a) of the Rules,[22] and continued operating the Station without a valid instrument of authorization, in violation of section 73.1745(a) of the Rules and section 301 of the Act. HTD explains that it completed construction of the Station's displacement facilities in accordance with its Displacement CP and commenced operation of those facilities well before the expiration date of the Displacement CP. HTD goes on to admit that it overlooked submitting the licenses to cover due to a misunderstanding with its former consulting engineer. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission's rules.[23] Furthermore, applicants and licensees

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[13] K49IT-D rebroadcasts the programming of KTFT-LD, Twin Falls, ID (KTFT-LD). KTFT-LD itself rebroadcasts the programing KTVB(TV), Boise, ID (KTVB), which includes NBC network programming and a 24/7 local news channel. KTFT-LD also airs local advertising targeted to residents of Twin Falls and surrounding areas. *See* https://www.ktvb.com/about-us (last visited Sept. 5, 2024).

[14] *Id.* at Statements of Revenue, Expenditures 2021, 2022, 2023. Based on a calculation by Division staff, HTD's average gross revenue during the 2021, 2022 and 2023 fiscal years, which run from January 1st through December 31st each year, was $38,728. HTD's revenue is collected through local tax assessments and lease payments from tenants on its tower structures. While normally such information is not provided and considered until the Forfeiture Order stage, we will consider this financial information that has been provided in calculating our proposed forfeiture. *See infra* para. 9

[15] *Id.* at 2.

[16] 47 U.S.C. § 503(b)(1)(B).

[17] *Id. See also* 47 CFR § 1.80(a)(1).

[18] 47 U.S.C. § 312(f)(1).

[19] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[20] *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).

[21] 47 U.S.C. § 312(f)(2).

[22] *See* 47 CFR § 73.3598(a). *See supra* n,3.

[23] *See, e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which

(continued….)

are responsible for the errors of their staff, including contractors.[24] We therefore find that HTD has apparently violated the Rules and Act and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required form.[25] The guidelines also specify a base forfeiture amount of $10,000 for construction and operation without an instrument of authorization for the service.[26] 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."[27]

8. When considering a licensee's ability to pay a forfeiture, the Commission will look at things such as: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.[28] Any claim relating to ability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.[29] In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has recognized that, in some cases, other financial indicators, such as net losses, may also be relevant.[30] If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.[31] In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally averages about five percent of the violator's gross annual income and has not exceeded eight percent thereof, although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.[32]

9. In this case, HTD filed the Station's license application and engaged in unauthorized operation of the Station over five years after the facility was completed and over two years after the

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the Commission does not consider a mitigating circumstance") (internal cite omitted); *see also Townsquare Media of El Paso, Inc.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 and n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted).

[24] *See, e.g., Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations).

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

[26] *Id.* A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

[27] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

[28] *See Discussion Radio, Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified,* Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

[29] *Id.*

[30] *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

[31] *Id.*

[32] *See Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a $4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of $75,167, $90,106, and $69,330, but finding amount would pose a financial hardship where licensee lost $345,000 during the same period).

Station's construction permit had expired.[33] HTD supplied its most recent financial statements in an effort to demonstrate that levy of a large forfeiture amount would pose an imposition for the licensee which is a small rural TV translator district with limited resources.[34] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act, section 1.80 of the Rules, and the *Forfeiture Policy Statement*, we find a forfeiture in the amount of $1,000. We find this amount is appropriate given HTD's history of compliance, substance of its financial statements, nature of its financing, and the unique facts and circumstances presented. While based on the financial documentation provided the forfeiture amount we propose is slightly higher than we have proposed in prior cases,[35] we believe a higher amount is warranted given how late the Station's Application was filed and the amount of time the Station engaged in unauthorized operation. Failing to timely file a license application following construction of a broadcast facility and operation of a facility without a valid authorization – whether consistent with the terms a construction permit or not – stands to undermine the Commission's licensing process, result in potentially harmful interference to other licensed or proposed operations, and create uncertainty in the television band.

10. *Request for Waiver*. HTD requests that the Displacement CP be reinstated and its Application granted. Section 73.3598 specifies that a license to cover application must be filed upon completion of construction and that a construction permit automatically expires, without affirmative action of the Commission, if the permittee fails to file a license to cover application.[36] A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.[37] Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its facility's construction permit expiration date is consistent with Commission precedent.[38] We find that based on the specific facts and circumstances presented here waiver is warranted.

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[33] For purposes of calculating the period of time of unauthorized operation, we only consider the time since the Station began operating with its displacement facilities in January 2019 until it filed its license to cover in May 2024.

[34] Petition at 3.

[35] *See e.g., Methow Valley Communications District,* Forfeiture Order, 38 FCC Rcd 4262 (MB 2023) (paid May 2023) (late-filed license and unauthorized operation of 3 years); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Proposed Liability, DA 23-953 (rel. Oct. 13, 2023) (paid Jan. 2024) (late-filed license and unauthorized operation of less than 2 years); *Garfield TV Club*, Memorandum Opinion and Order and Notice of Proposed Liability, DA 23-807 (MB 2023) (paid Sept. 2023) (late-filed license and unauthorized operation of 3 years).

[36] 47 CFR § 73.3598(a), (e).

[37] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

[38] *See, e.g.*, *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 11 (2011) (upholding as proper the Media Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver); *Lander County General Improvement District #1*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 24-878 (rel. Aug. 29, 2024)(imposing $1,000 forfeiture for late-filed license to cover and unauthorized operations for over four years, finding that based on the specific facts and circumstances presented, permanent loss of one of the community's TV translator stations would have a detrimental impact on community and be adverse to the public interest.); *supra* n.34 (citing to cases where rural LPTV or TV translator stations were displaced by the Incentive Auction and repacking process, but sanctioned for failing to timely file an application for license to cover their displacement facilities).

11. According to HTD, loss of the Station's programming would have an extremely detrimental impact on its community. The Station, which serves a small community of less than 1,000 persons and is located in a valley on the Snake River in south central Idaho, rebroadcasts programming from Twin Falls due to terrain shielding which blocks direct reception of those stations in Hagerman.[39] HTD states that the community depends on the over the air television, that brings them the Twin Falls, Idaho television networks.[40] Absent the Station, the programming being rebroadcast from Twin Falls would no longer be available over-the-air. Further, the Station did not make a voluntary decision to change channels. As previously noted, the Station was involuntarily displaced from its prior channel assignment as part of the Incentive Auction and repacking process which was implemented by the Commission at the direction of Congress for the purpose of increasing the availability of spectrum for wireless services.[41] In order to continue serving the public, the Station was required to apply for displacement relief to construct facilities to broadcast on a new channel. Based on these facts taken as a whole, we find that permanent loss of the Station would be adverse to the public interest. Nevertheless, enforcement action is warranted for failure to adhere to Commission rules.

12. In light of the facts and circumstances discussed above and our findings that forfeiture is an appropriate sanction for HTD's apparent violations, we will grant HTD's Petition, reinstate the Station's Displacement CP, and accept the Station's Application for processing. We will act upon the Application, by separate Division staff action. Our finding here and in other similarly situated cases where the Division has taken enforcement action and waived the Commission's rules in lieu of declining to accept a late filed application for license to cover,[42] does not override our general rules requiring permittees/licensees to construct within the time period set forth in their construction permit,[43] timely file a license to cover application upon completion of their facility and retain valid authorization to operate its facility.[44]

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[39] Petition at 3.

[40] *Id.*

[41] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014)(subsequent history omitted).

[42] *See supra* n.34.

[43] *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.").

[44] We take this opportunity to remind all licensees of their obligation to not only complete construction prior to the expiration of their construction permit, but also to file a license to cover in a timely manner and operate pursuant to valid authorization. Specifically, with regards to LPTV and TV translator stations that were either displaced by the incentive auction repack or required to transition their facility from analog to digital operations in conjunction with the Commission's mandated 2021 LPTV digital transition; we note that the construction permits for such stations, with limited exception, have now long since expired. The application window for LPTV and TV translator stations displaced by the incentive auction closed in May 2018 and the deadline for Stations to convert from analog to digital operations was July 13, 2021. *See Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Oher Important Deadlines are One Week Away*, Public Notice, 26 FCC Rcd 10364 (MB 2021); *See Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018 Through May 15, 2018, And Make Location and Channel Data Available, Public Notice*, 33 FCC Rcd 1234, 1238 (IATF and MB 2018). The Bureau has also started the process of lifting the current freeze on major modification applications. *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) (permitting the filing of major modifications by Class A, LPTV, and TV translator stations to change channels). Therefore, future cases with similar facts may dictate a different result from the one here. As previously stated,

(continued….)

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Act,[45] and sections 0.61, 0.204, 0.283, and 1.80 of the Rules,[46] that Hagerman Translator District is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of one thousand dollars ($1,000) for its apparent willful violation of section 73.3598(a) of the Rules[47] and apparent willful and repeated violations of section 73.1745(a) of the Rules[48] and section 301 of the Act.[49]

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.3 of the Rules,[50] section 73.3598(e) of the Rules[51] **IS WAIVED** and the application for license (LMS File No. 0000245215) of K49IT-D, Hagerman, Idaho **IS ACCEPTED FOR FILING** and will be acted upon by separate Division staff action.

15. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Rules,[52] that, within thirty (30) days of the release date of this *NAL*, Hagerman Translator District **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[53] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to VideoNAL@fcc.gov and Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[54]

- 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).[55] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-

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failing to timely file a license application following construction of a broadcast facility and operation of a facility without a valid authorization "stands to undermine the Commission's licensing process, result in potentially harmful interference to other licensed or proposed operations, and create uncertainty in the television band." *Supra* para. 9.

[45] 47 U.S.C. § 503(b).

[46] 47 CFR §§ 0.61, 0.204, 0.283, and 1.80.

[47] 47 CFR § 73.3598(a). *See supra* n.3.

[48] 47 CFR § 73.1745(a).

[49] 47 U.S.C. § 301.

[50] 47 CFR § 1.3.

[51] 47 CFR § 73.3598(e).

[52] 47 CFR § 1.80.

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

[54] 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.

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

databases/fees/wire-transfer.

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

17. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.[56] 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 in the manner specified below. A copy of the request must also be emailed to VideoNAL@fcc.gov and Shaun.Maher@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.

18. The written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[57] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A copy must also be emailed to VideoNAL@fcc.gov and Shaun.Maher@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

[56] *See* 47 CFR § 1.1914.

[57] 47 CFR §§ 1.16 and 1.80(g)(3). We note that we have already reduced the base forfeiture amounts based on information submitted by LCGID. We will look unfavorably upon a request for further reduction or cancellation based on the same information.

held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.[58]

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

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.[59]

20. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Hagerman Translator District, P.O. Box 223, 444 North State Street, Hagerman, ID 83332, as well as e-mailed to: dbybee2018@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

[59] 47 U.S.C. 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44–45 (2018). We note that we have already considered these factors in determining our proposed forfeiture amount and are unlikely to reduce the amount further absent additional unique facts and circumstances. *See supra* paras. 7-9.

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

In the Matter of	)	
	)	
Particle Communications Wholesale, Inc.	)	File No.: EB-IHD-24-00036689
	)	NAL/Acct. No.: 202432080034
	)	FRN: 0024064487

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against Particle Communications Wholesale, Inc. (Particle or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Particle's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Particle is a Texas corporation that provides facilities-based fixed BIAS to residences and businesses in Texas and South Carolina.[10] The Company holds nine FCC licenses in the Microwave Industrial/Business Pool.[11]

8. Particle failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided Particle with several notices regarding the requirement to file the Company's BDC

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Texas Secretary of State, Particle Comms. Wholesale, Inc., File No. 0802013215 (formed Jun. 20, 2014), https://www.sos.state.tx.us/corp/sosda/index.shtml (last visited Aug. 16, 2024); https://www.particlecomm.com/services (last visited Aug. 16, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Particle Comms. Wholesale, Call Signs WQVL650, WQVL651, WQVL652, WQVL653, WQVL657, WQVL658, WQVL659, WQXE544, WQXE545. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Jul. 31, 2024).

availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Particle on June 13, 2023, and August 8, 2023, and left voicemails,[13] and OEA emailed Particle on March 23, 2023 and July 19, 2023 using the contact information that Particle registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Particle a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Particle is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Particle failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, Particle has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Particle apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Particle to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Calls from Christopher Fettes, FCC OEA, to Particle (Jun. 13, 2023 and Aug. 8, 2023), in File No. EB-IHD-24-00036689.

[14] Email from OEA, FCC, to Particle (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to Particle (Jul. 19, 2023, 3:04 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Particle (Jul. 12, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Particle apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Particle of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, Particle failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find Particle apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which Particle is apparently liable.[32]

IV. CONCLUSION

17. We have determined that Particle Communications Wholesale, Inc., apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Particle is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, Particle Communications Wholesale, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Particle Communications Wholesale, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for Particle Communications Wholesale, Inc., to pay the proposed forfeiture, the Company shall notify the Enforcement Bureau at IHDTelecom@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, Particle Communications Wholesale, Inc., shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned

[30] The Company also failed to file a BDC report that was due March 1, 2023, however we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 Christopher Shrum, Chief Executive Officer, Particle Communications Wholesale, Inc., 115 Eden Ranch Drive, Canyon Lake, TX 78133.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-899
Released: September 9, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES LUMEN TECHNOLOGIES, INC.'S DEFAULTS ON ITS RDOF OBLIGATIONS IN FOUR STATES AND ALSO ANNOUNCES BROADBAND DEPLOYMENT ALIGNMENT PLAN PROCEDURES

AU Docket No. 20-34
WC Docket No. 19-126
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau) announces that certain Rural Digital Opportunity Fund (RDOF) census block groups (CBG) are now eligible for other funding programs. Specifically, Qwest Corporation and CenturyTel of Wyoming, Inc. (collectively, Lumen) have notified the Commission of their decisions to withdraw from the RDOF support program in all of the CBGs covered by their authorized winning bids in New Mexico (Study Area Code (SAC) 495105), South Dakota (SAC 395145), and Wyoming (SAC 512299).[1] In addition, Lumen has notified the Commission that it will not fulfill its commitment to offer voice and broadband service to certain CBGs within its RDOF supported service area in Colorado (SAC 465102).[2] Lumen will be subject to penalties, as described below, for its defaults. We will also refer Lumen's defaults to the Enforcement Bureau for further consideration.

[1] Letter from Joseph C. Cavender, Vice President & Deputy General Counsel, Federal Regulatory Affairs, Lumen Technologies, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Aug. 30, 2024) (*Lumen Withdrawal Letter*). Lumen Technologies, Inc. (formerly CenturyLink, Inc.) (Lumen) assigned its New Mexico, South Dakota, and Wyoming winning bids to its wholly-owned subsidiaries—Qwest Corporation and CenturyTel of Wyoming, Inc. *Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 4140 (WCB/OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*). In May 2022, CenturyTel of Wyoming, Inc. was authorized to receive a total of $9,855,321 in support over a 10-year term to offer voice and broadband service to 1,468 locations in Wyoming and Qwest Corporation was authorized to receive a total of $121,060 in support over a 10-year term to offer voice and broadband service to 10 locations in South Dakota. *Rural Digital Opportunity Fund Support Authorized for 830 Winning Bids*; AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 6072, Attach. A (WCB/OEA 2022) (*Lumen May 2022 Authorization Public Notice*). In June 2022, Qwest Corporation was authorized to receive a total of $2,038,002 in support over a 10-year term to offer voice and broadband service to 770 locations in New Mexico. *Rural Digital Opportunity Fund Support Authorized for 513 Winning Bids, Bids Default Announced*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 7271, Attach. A (WCB/OEA 2022) (*Lumen June 2022 Authorization Public Notice*).

[2] *Lumen Withdrawal Letter*. Lumen assigned its Colorado winning bids to Qwest Corporation. *Auction 904 Long-Form Applicants Public Notice*. In June 2022, Qwest Corporation was authorized to receive $7,482,178 in RDOF support over a 10-year term to offer voice and broadband service to 1,509 locations in Colorado. *Lumen June 2022 Authorization Public Notice*, 37 FCC Rcd 7271, Attach. A. Lumen is defaulting on 1,331 locations in Colorado. Lumen remains committed to deploying service to the remaining CBGs in its RDOF auction supported areas.

Although some defaults after auctions are expected because of changing business plans or economic circumstances, we expect carriers to live up to their deployment commitments, and those who fail to meet their obligations can jeopardize the opportunity to bring broadband to the promised areas and undermine the integrity of the programs. Such defaults are particularly regrettable when the carrier waits years after authorization to default, making it difficult to correct the problem and otherwise accommodate the defaulted areas in other deployment programs. On July 3, 2024, the Bureau released a public notice strongly encouraging carriers that were contemplating a default to contact the Bureau, as well as the relevant state or territory broadband offices and Tribal governments, as soon as possible to discuss their specific situation.[3] We emphasized that early defaults ensure that states and territories timely receive the necessary information for their Broadband Equity Access and Deployment (BEAD) planning and ensure that our sister federal agencies timely receive this information to target funding for their broadband deployment programs.[4]

When notified of a default, our Broadband Deployment Alignment Plan (BDAP) procedures provide for taking immediate action to coordinate with other federal and state agencies to minimize the impact on consumers and the geographic areas to which the defaulting carriers committed. BDAP is part of the Rural Broadband Accountability Plan which seeks to ensure that high-cost funds are properly invested and produce new broadband services to consumers lacking connectivity.[5] First, the Bureau ensures that the carrier has notified the relevant state broadband offices about the carrier's inability to deploy broadband infrastructure to the defaulted locations. Second, the Bureau notifies the National Telecommunications and Information Administration (NTIA) to begin a similar dialogue about the locations. These notifications allow the state and NTIA to promptly consider the implications for the ongoing BEAD Program and other, similar programs. Third, where feasible, the Bureau discusses with both the relevant state broadband office and the carrier whether there is another entity that may be interested in serving the area and assuming the defaulting carrier's RDOF obligations. Finally, if another carrier does not assume the obligation, the Bureau notifies NTIA, the Rural Utility Service of the U.S. Department of Agriculture (RUS), and the U.S. Department of Treasury of the circumstances so that the defaulted area can be given priority consideration in other federal broadband funding programs, in accordance with agreed-upon best practices. The Bureau also makes enforcement referrals where appropriate.

Our BDAP procedures have resulted in avoiding some defaults or mitigating the consequences. For example, the Bureau and the Virginia Department of Housing and Community Development worked closely with a carrier to avoid a Connect America Fund Phase II Auction default by efficiently facilitating a transfer of those obligations to another carrier.[6] Similarly, after RUS determined that a Community Connects grantee would be unable to meet the terms of its grant, the Bureau issued a waiver to include

[3] *Wireline Competition Bureau Provides Guidance for RDOF and CAF Phase II Support Recipients on Procedures for Provider Defaults to Ensure that Broadband Networks are Deployed to All Consumers*, AU Docket No. 20-34 et al., DA 24-646, at 2 (WCB Jul. 3, 2024).

[4] *Id.*

[5] Federal Communications Commission, Rural Broadband Accountability Plan, https://www.fcc.gov/rbap (last visited Sept. 9, 2024).

[6] *See 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, Public Notice, DA 24-741 (WCB July 31, 2024).

part of the grant area in the Enhanced A-CAM program to ensure broadband is deployed to those locations.[7]

By announcing in this Public Notice that 1) Lumen will not serve the identified eligible census blocks within the defaulted CBGs in Colorado, and 2) Lumen is defaulting on the eligible census blocks within the CBGs covered by all its authorized winning bids in New Mexico, South Dakota, and Wyoming,[8] we take the necessary step to formally announce that the relevant census blocks are eligible for funding from other federal and state funding programs subject to the rules of the other programs, furthering our responsibility to coordinate with other agencies to maximize the deployment of high-quality broadband service across the United States.[9] To promote the efficient use of broadband funding, a number of funding programs make areas ineligible for broadband deployment funding where a service provider is already subject to an enforceable commitment to serve.[10] This announcement, in conjunction

[7] *Connect America Fund*, WC Docket No. 10-90, Order, DA 24-424 (WCB May 3, 2024).

[8] The minimum geographic unit for bidding for RDOF was a CBG containing one more eligible census blocks. While bidders were required to bid at the CBG level, they can only use their support to offer service in the eligible census blocks within those CBGs. *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6146, para. 213 (2020).

[9] Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 *et seq.*) (BICA) (requiring the Federal Communications Commission, the Department of Agriculture, and the National Telecommunications and Information Administration to "enter into an interagency agreement requiring coordination between the covered agencies for the distribution of funds for broadband deployment . . . ."). On June 25, 2021, the agencies announced that they had entered into an agreement. Press Release, FCC, FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), https://www.fcc.gov/document/fcc-ntia-usda-sign-interagency-pact-broadband-funding-deployment. In an effort to further facilitate broadband deployment funding coordination, on May 9, 2022, the FCC, USDA, and NTIA entered into an interagency agreement with the Department of Treasury. Press Release, FCC, FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding (May 12, 2022), https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement.

[10] *See, e.g.*, Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 36-37 & n.52 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (BEAD Program NOFO) (explaining that any location that is already subject to an enforceable commitment for the deployment of qualifying broadband cannot be treated as unserved or underserved); Department of Commerce, National Telecommunications and Information Administration, Tribal Broadband Connectivity Program Round 2 Notice of Funding Opportunity at 10-11, 28 (July 27, 2023), https://www.ntia.gov/sites/default/files/2023-07/ntia-tbcp-round2-nofo.pdf ("A Tribal Government may not certify Tribal Lands covered under an Enforceable Buildout Commitment as defined [in the NOFO] . . ., as Unserved"); Department of Agriculture, Rural Utilities Service, Corrected Notice of Funding Opportunity for the Community Connect Grant Program for Fiscal Year 2023, 88 Fed. Reg. 87750, 87751 (Dec. 19, 2023) ("Areas receiving, or areas that have received final approval for, other federal funding to construct terrestrial facilities providing at least 10/1 Mbps service in the project Proposed Funded Service Area as of the date of this notice, and which have been reported to the agency, are ineligible."); Department of Agriculture, Rural Utilities Service, Rural eConnectivity (ReConnect) Program Notice of Funding Opportunity, 89 Fed. Reg. 13035, 13036 (Feb. 21, 2024) (defining an enforceable commitment to mean "a legally enforceable obligation by any federal, state, or local agency, utilizing Federal Funds, to provide broadband service with speeds of at least 100 megabits per second (Mbps) downstream and 20 (Mbps) upstream"); Department of Treasury, Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States, at 3-4 (Sept. 2021), https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf ("To the extent Recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable wireline service at speeds of at least 100 Mbps of download speed and 20 Mbps of upload speed, the Recipient should ensure that the Capital Projects Fund

(continued….)

with the actions described above, avoids leaving these areas unserved for the duration of the RDOF deployment terms,[11] because providers may now have access to alternative funding to serve these areas.

Lumen remains subject to all eligible telecommunications carrier (ETC) obligations unless and until it follows the relevant procedures to relinquish its designations.[12] Additionally, it cannot discontinue voice service without Commission approval.[13]

Lumen- Colorado. In Appendix A, we provide a list of all the RDOF eligible census blocks contained within the CBGs that Lumen will not serve in Colorado. In addition, we will also update the Broadband Funding Map to remove these census blocks from Lumen's service area.[14] Below, we provide a limited waiver of the Commission's non-compliance rules to adjust support to reflect that these areas will not be served. Lumen otherwise remains subject to RDOF non-compliance measures for failure to meet the terms and conditions of support, including support recovery for all unserved locations at the end of the deployment term.[15] We will continue to use the available tools to monitor Lumen's compliance with the applicable deployment obligations in its remaining supported service area.[16]

While Lumen notified the Commission that it will not serve the identified census blocks in Colorado, it is not withdrawing from RDOF in these states. The RDOF support program rules do not provide for partial withdrawals from the program. The Commission takes compliance with the terms and conditions of its high-cost programs seriously and imposes non-compliance measures if the requirements are not met.[17] Lumen remains subject to the program rules, including the applicable non-compliance measures,[18] for the duration of the support term except as explained below, and remains committed to serve the eligible census blocks within the remaining CBGs in its supported service areas with voice and broadband service meeting program requirements.

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grant funding will not be used for costs that will be reimbursed by the other federal or state funding stream(s). That is, Capital Projects Fund grant funds must be used only for complementary purposes.").

[11] RDOF recipients authorized in 2021 and 2022 must offer the required service to 100% of their original location total by December 31, 2027 and December 31, 2028, respectively. *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 709, para. 45 (2020) (*RDOF Order*). If more locations than the original estimated are identified during the support term, recipients will have an additional two years to serve the additional locations subject to limited exceptions. *Id.* at 710, para. 49.

[12] 47 U.S.C. § 214(e)(4).

[13] 47 U.S.C. § 214(a); 47 CFR § 63.71.

[14] Federal Communications Commission, Broadband Funding Map, https://fundingmap.fcc.gov/home (last visited Sept. 5, 2024).

[15] *See, e.g.*, 47 CFR §§ 54.320(c), (d), 54.806(b), (c).

[16] *See, e.g.*, 47 CFR §§ 54.316, 54.320(d)(1).

[17] *See, e.g.,* 47 CFR §§ 54.320(c), (d), 54.806(b), (c); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15694-700, paras. 142-54 (2014) (*2014 Connect America Order*) (adopting a framework for support reductions, support recovery, and reporting obligations that are calibrated to the extent of a support recipient's non-compliance with service milestones); *RDOF Order*, 35 FCC Rcd at 710, para. 48 (explaining that compliance with RDOF deployment obligations would be determined at the state level).

[18] *See, e.g.*, 47 CFR §§ 54.320(c), (d), 54.806(b), (c).

On our own motion, we find good cause to waive in part sections 54.320(d) and 54.806(c)(1) of the Commission's rules for the census blocks identified in Appendix A consistent with precedent,[19] and instruct USAC to stop paying support for the identified census blocks pursuant to section 54.320(c)(1)(iii) of the Commission's rules.[20] Generally, the Commission's rules may be waived for good cause shown.[21] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[22]

Despite our limited waivers, which are narrowly limited to stopping payments of future support for the identified census blocks and eliminating the requirement that Lumen serve newly built locations in the defaulted census blocks upon reasonable request, Lumen otherwise remains subject to section 54.320(d) and 54.806(c)(1) of the Commission's rules.[23] If Lumen fails to meet its interim service milestones by not serving the required number of locations based on its original authorized location total, it will be placed in the associated non-compliance tier.[24] If the applicable non-compliance tier requires that we withhold an amount of support that exceeds the amount of support we have stopped paying for the

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[19] *Wireline Competition Bureau Announces Certain RDOF and CAF II Auction Census Block Groups are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-181 (WCB Feb. 28, 2024) (*Feb 2024 Post-Authorization Default Public Notice*).

[20] 47 CFR §§ 54.320(c), (d), 54.806(b), (c)(1). Section 54.320(c) of the Commission's rules states that support recipients that "fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including . . . reductions in support amounts . . . ." 47 CFR § 54.320(c). Future monthly support payments will be reduced pro rata based on the number of locations associated with the CBGs that the support recipient is defaulting on and calculated as follows, subject to any applicable non-compliance tiers: ((total monthly authorized support/total authorized locations) x (total authorized locations – defaulted locations)). Subject to support withholding pursuant to any applicable non-compliance tiers, Lumen's monthly support total in Colorado will be approximately $7,354.

[21] 47 CFR § 1.3.

[22] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972) (*WAIT Radio)*) (*Northeast Cellular*). For the same reasons, we also provide a limited waiver of section 54.802(c)(1)(iii) of the Commission's rules to the extent Lumen would be required to serve upon reasonable request locations in the defaulted census blocks that are newly built after the Bureau adopts revised location totals for RDOF. 47 CFR § 54.802(c)(1)(iii). Prior to the sixth year service milestone, the Bureau will determine the actual number of locations in RDOF recipients' service areas and will publish revised location counts for each RDOF recipient. 47 CFR § 54.802(c)(1); *RDOF Order*, 35 FCC Rcd at 709, para. 45. Because Lumen has no intention of serving these areas and carriers that receive other funding to serve these census blocks may be obligated to serve the newly built locations in these census blocks, it does not serve the public interest to require Lumen to serve upon request any locations built after the Bureau adopts revised location totals even if such requests could otherwise be deemed reasonable. However, absent a waiver, Lumen will be subject to support recovery for the locations in defaulted census blocks that are included in the revised location totals, pursuant to section 54.802(c)(1) and 54.806(c)(1) of the Commission's rules. 47 CFR §§ 54.802(c)(1), 54.806(c)(1). We similarly find good cause to extend this limited waiver of section 54.802(c)(1)(iii) to RDOF carriers that previously defaulted early on certain RDOF CBGs. *See Feb 2024 Post-Authorization Default Public Notice* (announcing BARConnects, LLC and North Alabama Electric Cooperative had defaulted on certain RDOF CBGs); *Wireline Competition Bureau Announces Certain RDOF and CAF II Auction Census Block Groups Are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-449 (WCB May 10, 2024) (announcing Charter had defaulted on certain RDOF CBGs); *Wireline Competition Bureau Announces Certain RDOF and CAF II Auction Census Block Groups Are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-669 (WCB July 10, 2024) (announcing Charter had defaulted on certain additional RDOF CBGs and Co-Mo Comm, Inc. d/b/a Co-Mo Connect had defaulted on certain RDOF CBGs).

[23] 47 CFR §§ 54.320(d), 54.806(c)(1).

[24] 47 CFR §§ 54.320(d)(1), 54.806(c).

identified census blocks, we will withhold an amount of additional support that equals the difference between: 1) the amount of support required to be withheld pursuant to section 54.320(d)(1), and 2) the amount of support we stopped paying for the identified census blocks.[25] If the applicable non-compliance tier requires that we withhold less support than the amount of support we have stopped paying for the identified census blocks pursuant to our limited waiver, we will make no further adjustments to Lumen's monthly disbursement, i.e., we will withhold no support other than the support we stopped paying for the identified census blocks.[26] At the end of the deployment period, we will apply section 54.806(c)(1) to recover support for all unserved locations, including the locations covered by the identified census blocks.[27] Any additional issues related to the support recovery required by section 54.806(c)(1) of the Commission's rules will be addressed in a separate release.[28]

Lumen- New Mexico, South Dakota, Wyoming. We consider Lumen to have defaulted on its RDOF service milestones in New Mexico, South Dakota, and Wyoming. Lumen will receive no further RDOF auction support payments in these states,[29] and is subject to support recovery and non-compliance measures consistent with the Commission's rules.[30] We will also remove its RDOF service areas from the Broadband Funding Map.[31]

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[25] 47 CFR § 54.320(d)(1). As a simplified example, if a carrier receiving $100 per month in support is required to serve 100 locations and has indicated it will not serve eligible census blocks within CBGs covering 20 of those locations, we will reduce the carrier's ongoing monthly support by a pro rata amount to stop future payments for the defaulted census blocks so that the carrier is now receiving $80 per month (i.e., the Commission will no longer pay the $20 per month associated with the identified census blocks) (($100/100) x (100-20) = $80 a month). If the carrier is in non-compliance Tier 3 so that we are required to withhold 25% of support (i.e., $25; .25 x $100), we would withhold an extra $5 a month so that we are not paying the carrier $25 in total each month (i.e., $20 for the defaulted census blocks + $5 additional). If the carrier comes back into compliance so that it is entitled to have its support restored, we would only restore the additional monthly amount of support that we withheld (i.e., $5 a month) and would not restore the $20 we have stopped paying for the identified census blocks. 47 CFR § 54.320(d)(1)(iii).

[26] Assuming the same simplified example as in the prior footnote, if the carrier is in non-compliance Tier 2 so that we are required to withhold 15% a month (i.e., $15, .15 x $100), we would not withhold any additional monthly support since we have already stopped paying the carrier $20 a month for defaulted census blocks, and $20 exceeds the $15 we are required to withhold. 47 CFR § 54.320(d)(1)(ii).

[27] 47 CFR § 54.806(c)(1).

[28] *Id.*

[29] *See* 47 CFR § 54.804(c)(4) ("Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted."). *See also Lumen May 2022 Authorization Public Notice*, 37 FCC Rcd at 6072-79; *Lumen June 2022 Authorization Public Notice*, 37 FCC Rcd at 7271-78 (providing a non-comprehensive summary of the RDOF requirements). After Lumen notified WCB of its intent to withdraw from the RDOF support program in these states, WCB instructed USAC to suspend Lumen's RDOF support payments in these states. 47 CFR §§ 54.320(c), 54.806(b).

[30] 47 CFR §§ 54.804(c)(4), 54.320, 54.806(c). Lumen's decision to withdraw from the RDOF support program in these states and not pursue further support constitutes notification that it will not meet the final service milestone and that it will not come into compliance after a 12-month grace period or at any point during the support term. If a support recipient does not repay the required support recovery amount within six months of receiving an invoice from USAC, the Bureau will authorize USAC to draw on the support recipient's letter of credit. *Id.* § 54.804(c)(4)(i). Carriers seeking relief from applicable support recovery measures have the option of submitting a request for waiver. *Id.* § 1.3.

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[31] The census blocks covered by Lumen's authorized winning bids in these states are available on the "Results" tab of the Auction 904 website at https://www.fcc.gov/auction/904 in the document "Historical Authorized Auction 904 Long-Form Applicants Data."

Appendix A

Qwest Corporation

RDOF Defaulted Census Blocks

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026000
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026003
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026004
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026005
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026006
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026009
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026011
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026014
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026015
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026016
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026017
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026018
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026019
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026022
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026024
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026025
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026038
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026045
Qwest Corporation	0003746757	Colorado	465102	Boulder	080130137026048
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001002
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001015
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001016
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001019
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001032
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001042
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001079
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001095
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001105
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001110
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001114
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001118
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001119
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001120
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001164
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001174
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001189
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001228
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001229
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001230

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001279
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001280
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001281
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001282
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370002001284
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001098
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001136
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001181
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001184
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001187
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001190
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001191
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001192
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001193
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001194
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001216
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001217
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001218
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001220
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001310
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001311
Qwest Corporation	0003746757	Colorado	465102	Eagle	080370006001419
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001024
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001025
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001027
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001030
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001031
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001035
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001037
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001038
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001039
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001040
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001041
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001042
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001044
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001045
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001046
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001048
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001090
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001092
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001093
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001096
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001110

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001111
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001112
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001116
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001125
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001126
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001132
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001133
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001148
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001151
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001152
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001157
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001158
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001160
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001161
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001163
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001164
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001165
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001167
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001168
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001170
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001171
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001172
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001178
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001189
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001192
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001200
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001201
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001202
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001204
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001205
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001207
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001214
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001215
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001223
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001227
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001242
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001246
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001251
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001253
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001256
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001258
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001260
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001266

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001267
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001269
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001270
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001271
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001274
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001277
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001282
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001284
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001285
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001286
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001289
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001290
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001292
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001293
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001294
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001296
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001297
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001299
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001326
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001329
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001330
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001332
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001333
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001334
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001335
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001336
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001337
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001338
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001339
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001341
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001342
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001343
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001344
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001350
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001351
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001352
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001353
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001356
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001361
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001367
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001369
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001372
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001382

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001383
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001391
Qwest Corporation	0003746757	Colorado	465102	Lake	080659619001403

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
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TTY: 888-835-5322

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September 10, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES 15-BUSINESS DAY FILING WINDOW FOR CYBERSECURITY LABELING ADMINISTRATOR AND LEAD ADMINISTRATOR APPLICATIONS UNDER THE CYBERSECURITY LABELING FOR INTERNET OF THINGS PROGRAM

PS Docket No. 23-239

1. By this Public Notice, the Federal Communications Commission's (FCC or Commission) Public Safety and Homeland Security Bureau (Bureau) announces that the 15-business day filing window for applications from entities seeking designation by the Commission as a Cybersecurity Labeling Administrator (CLA) and Lead Administrator **will open on September 11, 2024 and close October 1, 2024**.[1] The Bureau also provides determinations regarding application format, filing fees, selection criteria, sharing of expenses, Lead Administrator neutrality, and confidentiality and security requirements in this Public Notice.[2]

I. BACKGROUND

2. In March 2024, the Commission established a framework for a voluntary cybersecurity labeling program for consumer wireless Internet of Things (IoT) products (IoT Labeling Program),[3] which includes selecting third party administrators to support the program.[4] The Commission delegated authority to the Bureau to open an initial filing window to receive applications from entities seeking authority to be recognized as a CLA and those seeking to be recognized as the Lead Administrator.[5] CLAs will be authorized by the Commission to certify use of the FCC IoT Label, which includes the U.S.

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[1] While the Bureau may open additional filing windows at later dates, the Bureau will not accept applications for this initial round of applications that are filed after this filing window closes. However, applicants requiring additional time may, in accordance with Section 1.46 of the Commission's rules, request an extension of time for up to 10 additional calendar days to complete their applications. 47 CFR § 1.46.

[2] The Bureau sought comment on additional issues including withdrawal of CLA and Lead Administrator approval, recognition of CyberLABs located outside the U.S. by the Lead Administrator, complaints, and the registry, which will be addressed by the Bureau at a later date. Some of these issues will be part of the Lead Administrator's 90-day stakeholder engagement. The Bureau will rely, in part, on the notice and record developed in response to the June 2024 IoT Labeling Public Notice when considering the recommendations forthcoming from that stakeholder process supplemented, if warranted, based on subsequent recommendations or developments.

[3] *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) (*IoT Labeling Order*).

[4] *IoT Labeling Order* at 26, para. 48.

[5] *Id.* at 36, para. 64. The *IoT Labeling Order* also delegated authority to the Bureau to open additional filing windows or otherwise accept additional applications for authority to be recognized by the Bureau as a CLA when and as the Bureau determines it is necessary. *Id.*

government certification mark (U.S. Cyber Trust Mark), by manufacturers whose products are found to be in compliance with the Commission's IoT cybersecurity labeling program rules.[6] The Lead Administrator will, among other duties, act as liaison between the Commission and CLAs, conduct stakeholder outreach to identify and/or develop and recommend to the Bureau technical standards and testing procedures for at least one class of IoT products, and in collaboration with CLAs, the FCC, and other stakeholders, develop and execute a plan for a consumer education campaign.[7]

II. CLA AND LEAD ADMINISTRATOR APPLICATIONS

A. Format of CLA and Lead Administrator Applications

3. In the *June 2024 IoT Labeling Public Notice*, the Bureau proposed that applications be submitted in narrative format via email and sought comment on this tentative determination.[8] We continue to believe that the information to be submitted by entities applying to be a CLA or Lead Administrator lends itself to a narrative discussion of their qualifications and adopt the narrative format proposed. While ioXt argues that a fillable form would better ensure uniformity among applications,[9] we believe the evaluation criteria and CLA/Lead Administrator responsibilities in the *IoT Labeling Order* are specific enough to allow for tailored applicant responses and comparative evaluation by the Commission at this time. In addition, as outlined by the Wi-Fi Alliance, "…a narrative format will better allow CLA applicants to describe in detail their expertise, the types of cybersecurity assessments in which they are involved, and how those activities and other qualifications will enable them to perform the CLA role. Because all these attributes are imperative to the performance of CLA responsibilities, a narrative will best allow the Commission to assess applicant qualifications."[10] UL Solutions also supports a narrative-format application, noting that this format will allow applicants to provide the detailed information needed to support their applications.[11] TÜV SÜD also commented that email is functional, and that a fillable form, while helpful for clarification, should also include a narrative text field so applicants can add relevant information.[12] One commenter, ioXt, expressed concern that a "narrative email" may require additional communication between staff and applicants to obtain all necessary information to evaluate an application.[13] We note that an enumeration of the evaluation criteria, and additional application instructions, including a "Frequently Asked Questions" link, are also provided below in this Public Notice and will provide further guidance to applicants.[14] Further, the Bureau has considered and anticipates that staff may need to respond to applicant questions during the application review process and has designated staff for that purpose below.[15]

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[6] *Id*. at 26-27, para. 48.

[7] *Id*. at 27-29, para. 52.

[8] *Public Safety and Homeland Security Bureau Requests Comment on Implementation of the Cybersecurity Labeling for Internet of Things Program*, PS Docket No. 23-239, DA 24-617, at 2, para. 2 (June 27, 2024) (*June 2024 IoT Labeling Public Notice*).

[9] ioXt Comments at 1.

[10] Wi-Fi Alliance Comments at 2.

[11] UL Solutions Comments at 1 (UL Comments).

[12] TÜV SÜD Comments at 1.

[13] ioXt Comments at 1.

[14] *Infra* Section IV.

[15] *Id*.

4. Entities applying to be a CLA or the Lead Administrator must file a narrative explanation of their qualifications to the Office of the Secretary.[16] Consistent with the record, we determine that CLA and Lead Administrator applications and supporting documentation shall be treated as presumptively confidential.[17] Each page of the application must be clearly and conspicuously labeled "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION**." As we expect applications will contain commercially sensitive and proprietary information that the Commission routinely treats as confidential, applications shall remain presumptively confidential, regardless of disposition of the application.[18] We decline to publish applications as a matter of course, including for those entities selected as CLAs or the Lead Administrator. We disagree with commenters who argue that the value of understanding CLA methodologies outweighs confidentiality protections,[19] as Commission evaluators will still have the opportunity to review the applicant's testing methodologies submitted to the agency. Maintaining the presumptive confidentiality of CLA and Lead Administrator applications, including those applications that are approved by the Bureau, will provide applicants with assurances that the commercially sensitive business information they submit in conjunction with their voluntary participation in the FCC's Program will not be publicly disclosed.[20] We believe maintaining the presumptive confidentiality of these applications will encourage additional entities to submit applications for these voluntary roles. Thus, in announcing the entities selected as CLAs and Lead Administrator, we only plan to make public the entity's name and their contact information.

5. While the Bureau will review the narrative applications received via email, we seek to leverage existing procedures, including records management, by building on a framework for the filing of confidential materials that the Commission has used in the past.[21] Consistent with that historical approach, applicants must file the application and supporting materials with the Office of the Secretary either via hand or messenger delivery, by commercial overnight courier, or First-Class or overnight U.S. Postal Service mail. A copy must be sent to the Bureau via email as a password protected .pdf file to CyberTrustMark@fcc.gov. Additional instructions on submitting applications are provided below in Section IV.

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[16] As stated in the *2024 IoT Labeling Public Notice*, the Bureau may re-evaluate the need for a fillable form and seek additional comment on this issue after this CLA application filing window closes. *June 2024 IoT Labeling Public Notice* at 2, para. 2.

[17] While applicants may choose to file their application publicly, commenters broadly agreed that CLA and Lead Administrator applications presumptively should be treated as confidential at the pre-selection stage. *See, e.g.,* ITI Comments at 2; Logitech Comments at 1; NCTA Comments at 8-9; TÜV SÜD Comments at 4; UL Comments at 6; Letter from J. David Grossman, Vice President, Policy & Regulatory Affairs, CTA, Katie McAuliffe, Senior Director, Telecommunications Policy, Information Technology Industry Council, David Valdez, Vice President, Privacy and Cybersecurity, CTIA, Steve Griffith, Executive Director, Regulatory & Industry Affairs, National Electrical Manufacturers Association to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 3 (filed Sept. 10, 2024) (CTA et al. Letter).

[18] *See* ITI Comments at 2 (arguing applications should remain confidential at all stages to protect proprietary technology and trade secrets).

[19] Consumer Reports, Carnegie Mellon University, Public Knowledge, Electronic Privacy Information Center (EPIC), New York University Comments at 2 (CR et al., Joint Comments).

[20] As NCTA's comments recognize, to the extent that Commission records "would be subject to disclosure under the Freedom of Information Act," the Commission would have an obligation to make that available in accordance with that law and the Commission's implementing rules. NCTA Comments at 9. *See also, e.g.*, 47 CFR § 0.461.

[21] *See, e.g.*, *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361 (Mar. 31, 2020).

B. FCC Filing Fees for CLA and Lead Administrator Applications

6. In the *June 2024 IoT Labeling Public Notice*, the Bureau sought comment on whether a filing with the Commission by an entity that is seeking to be a CLA or Lead Administrator constitutes an application under section 8 of the Communications Act, and if so, whether an existing FCC fee category would cover such applications or if a new application fee category should be established.[22] In addition, the Bureau sought comment on what fee the Commission should charge in connection with such a filing, if applicable.[23] Commenters do not opine on whether it is appropriate to charge application fees. The Association of Home Appliance Manufacturers (AHAM), however, explains that if fees are charged, they "should not be cost prohibitive to the point where it unnecessarily limits those entities that wish to apply."[24] TÜV SÜD does not comment on whether a fee should be assessed, but does indicate that if a fee is assessed, the Commission should set a new fee category.[25]

7. In this instance, our IoT Labeling Program derives in part from our authority to hold and utilize a registered certification mark.[26] In reviewing applications to be a CLA or Lead Administrator, we therefore are not acting solely under our Communications Act authority, but also to protect our registered certification mark. Given this dual role, at this time, we do not believe that the nature of our review of the applications is such that they should be subject to an application fee.[27] We recognize that the process for applying to be a CLA or Lead Administrator may evolve with time. As such, we do not wholly foreclose

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[22] The Commission has the authority to assess application fees under Section 8 of the Communications Act and has assessed application fees since 1986. Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, §§ 5002(e), (f), 100 Stat. 82, 118-121 (1986). In 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). 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. *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*, 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); *See* 47 CFR subpart G (Schedule of Statutory Charges and Procedures for Payment).

[23] *See June 2024 IoT Labeling Public Notice* at 3-6, paras. 3-10.

[24] Association of Home Appliance Manufacturers Comments at 1 (AHAM Comments).

[25] TÜV SÜD Comments at 1.

[26] *See* 15 USC 1054 ("Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered […].") and 15 USC 1127 ("In the construction of this chapter [the Lanham Act][…] [t]he term 'person' also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.").

[27] The decision in section II.B of this Public Notice is made in conjunction with the Office of Managing Director (OMD). *See IoT Labeling Order* at 36, para. 64 (delegating "to PSHSB and OMD authority to take any necessary steps, including adoption of additional procedures and any applicable fees after selection of the CLAs, if necessary to ensure compliance with the Communications Act or applicable government-wide statutes that are implicated by the IoT Labeling Program").

adopting application fees in the future. Given these facts coupled with the lack of support in the record, the Bureau will not assess FCC application fees on CLA and Lead Administrator applications at this time.

C. Bureau Selection of Cybersecurity Label Administrators and the Lead Administrator

8. The Bureau declines to expand the CLA and Lead Administrator selection criteria beyond what is set out in the *IoT Labeling Order*. In the *June 2024 IoT Public Notice*, the Bureau sought comment on whether there are additional areas of expertise or specific requirements a CLA applicant should be required to demonstrate in addition to those listed in the *Order*. The Bureau also asked what additional criteria, if any, the Bureau should take into consideration during the Lead Administrator selection process, as well as safeguards the Bureau might adopt to ensure the stakeholder process remains competitively neutral and whether all selection criteria should be weighted the same.

9. NCTA suggests that "when selecting a Lead Administrator, the Bureau should consider candidates' ability to maintain the Program's integrity when translating the substantive technical security requirements into recommended standards and test procedures, and do so without creating unnecessary deterrents for manufacturer participation in the Program."[28] We agree that a Lead Administrator's maintenance of the Program's integrity during the 90-day stakeholder process and resulting recommendations is very important to the success of the Program. However, the Bureau finds that the criteria outlined in the *IoT Labeling Order* are sufficient to ensure the selected Lead Administrator has the technical experience and the high integrity expected of an entity supporting an FCC program. This position is supported by UL Solutions, which states the "[*IoT Labeling Order*] did not neglect any important considerations for assessing the qualifications of organizations to serve as CLAs or as the Lead Administrator."[29] We believe that the public/private partnership and close collaboration between industry and other stakeholders contemplated in *the IoT Labeling Order*, along with the Commission's oversight, will ensure that there are adequate guardrails to maintain the Program's integrity in this regard.[30]

10. NCTA also encourages the Bureau to evaluate Lead Administrator applications for their ability to avoid conflicts of interest, including any relationships the Lead Administrator applicant may have that could create the appearance of impropriety or a conflict of interest, such as complaints from manufacturers, and suggests evaluating whether Lead Administrator applicants have the financial resources to avoid such conflicts going forward.[31] We disagree that it is necessary to take additional measures when evaluating applications for this purpose. Existing application criteria require an applicant to describe their organization structure, including an explanation of how it will avoid personal and organizational conflict when processing applications, and demonstrate implementation of controls to eliminate actual or potential conflicts of interests (both personal and organizational), to remain impartial and unbiased.[32] In addition, the Future of Privacy Forum urges the Bureau to "consider requiring program administrators to possess relevant privacy expertise as well as cybersecurity expertise."[33] We

[28] NCTA Comments at 4.

[29] UL Comments at 2.

[30] *IoT Labeling Order* at 2, para. 2 ("[r]ecognizing that a successful voluntary IoT Labeling Program will require close partnership and collaboration between industry, the federal government, and other stakeholders" and adopting "an administrative framework for the IoT Labeling Program that capitalizes on the existing public, private, and academic sector work in this space, while ensuring the integrity of the IoT Labeling Program through oversight by the Commission.").

[31] NCTA Comments at 7.

[32] *See IoT Labeling Order* at 32-33, para. 59.

[33] Future of Privacy Forum Comments at 4.

agree that privacy is an integral aspect of cybersecurity, and note that existing application criteria require applicants to possess both privacy and cybersecurity expertise, including demonstrated expert knowledge of the National Institute of Standards and Technology (NIST) cybersecurity guidance and recommended criteria and labeling program approaches, which include privacy among their core cybersecurity capabilities.[34]

11. We also note that the Wi-Fi Alliance recommends that in addition to demonstrating their "[e]xpert knowledge of FCC rules and procedures associated with product compliance testing and certification," CLA applicants also demonstrate their *experience* in this area.[35] Wi-Fi Alliance recognizes that while a lack of current experience with developing and implementing security standards should not be disqualifying, it would serve the public interest for the Bureau to include this "additional requirement, particularly concerning specific IoT products where cybersecurity standards have already been developed and tested."[36] The Wi-Fi Alliance encourages the Bureau to give a preference to CLA applicants with this experience.[37] The Bureau declines to require applicants to demonstrate previous experience with FCC rules and procedures associated with product compliance testing and certification as a condition precedent to being an approved CLA or give preference to CLA applicants with this experience. In particular, applicants are always encouraged to provide any additional information that helps demonstrate their expertise or experience under the relevant criteria and, providing examples of an applicant's experience where applicable, in general, will provide more information from which the Bureau can evaluate an application.[38] Additionally, CTIA proposes criteria for evaluating CLA applications to include a minimum of 5-10 years of experience managing a cyber certification program and proven experience in running or participating in a working group on cybersecurity standards.[39] While we agree that this set of criteria can be useful to demonstrate a "proven track record," we are concerned that requiring such specific criteria may unnecessarily exclude applicants that otherwise may have appropriate knowledge and expertise. Therefore, we decline to adopt this recommendation.

12. We conclude that we will maintain the criteria as set out in the *IoT Labeling Order* for the initial round of CLA and Lead Administrator applications. The Bureau, jointly with OMD and, to the extent necessary, Office of General Counsel, will receive and review administrators' applications for compliance with each criteria set forth in the *IoT Labeling Order* and to best ensure the success of the program.[40] We note that UL Solutions recommends certain requirements be defined in greater detail to avoid subjective determinations,[41] but we believe that the *IoT Labeling Order* provided a comprehensive list of required criteria that covers the breadth of expertise and capabilities necessary to select a CLA and

[34] *IoT Labeling Order* at 32-33, para 59. *See also*, NIST, NISTIR 8259A, *IoT Device Cybersecurity Capability Core Baseline* (2020), https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259A.pdf.

[35] Wi-Fi Alliance Comments at 3.

[36] *Id.*

[37] *Id.*

[38] *See infra* note 125 (providing that Applicants may, for example, demonstrate experience with the FCC's Equipment Authorization Program or another FCC-run compliance program with respect to FCC rules and procedures associated with product compliance testing and certification).

[39] CTIA Comments at 14.

[40] IoT Labeling Order at 36, para 64; *see also* ioXt Comments at 4 (recommending that all selection criteria be weighted the same).

[41] UL Comments at 3.

Lead Administrator at this early stage of the program and is neutral toward applicants.[42] Further, as noted above, applicants are not limited to providing the required criteria listed in the *IoT Labeling Order*, but have the flexibility to offer additional expertise or selection criteria they believe are pertinent and support their application (e.g., expected costs/budget for Lead Administrator to carry out their responsibilities, information to support their ability to carry out the respective responsibilities, etc.). Should the Bureau conclude that it would be appropriate to open subsequent filing windows, we may seek comment on, and consider adoption of, additional selection criteria at that time.

13. As discussed in the *IoT Labeling Order*, authorizing one or more CLAs subject to Commission oversight to handle the routine administration of the program will help to ensure its timely and consistent rollout, and independent third-party CLAs will bring trust, consistency, and an impartial level playing field to the IoT Labeling Program and will provide the required expertise for the administration of the program. Leveraging the expertise of multiple existing program managers and using pre-existing systems and processes that meet our program specifications will minimize administrative delay and ensure the Commission effectively utilizes the expertise of those entities who have made investments in their own cybersecurity labeling programs. Entities that have experience working with manufacturers and IoT conformity and standards testing, as required in the criteria adopted in the *IoT Labeling Order*, will also best be able to promote an efficient and timely rollout of the IoT Labeling Program.

14. We disagree with CTIA's suggestion that the Bureau adopt a flexible approach with respect to International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) 17065 accreditation requirements for CLAs with a certain level of experience to avoid unnecessary costs and delays.[43] CTIA posits that "[accreditation] can be costly and time-consuming to obtain and is unnecessary for prospective CLAs that have demonstrated track records in managing similar certification programs."[44] Instead, CTIA proposes for entities with at least 5-10 years of experience running certification programs, ISO/IEC 17065 accreditation should be optional.[45] In contrast, A2LA submits that the "ISO/IEC 17065 accreditation requirement will be of benefit to the FCC and the consumers it serves by providing necessary risk mitigation… Claiming a certain number of years' experience is not equivalent to demonstrating technical competence or compliance."[46] The *IoT Labeling Order* and accompanying rules require that all CLAs obtain ISO/IEC 17065 accreditation to the Commission's scope within six months of the effective date of the adopted standards and testing procedures.[47] The Commission previously determined that "leveraging accredited industry bodies to perform conformity assessments will 'speed the establishment of the program and increase the program's ultimate quality.'"[48] As such, we decline to adopt CTIA's suggested exemption. Alternatively, CTIA recommends an 18-month grace period to obtain such accreditation, for entities that have a proven track

[42] *See also* AHAM Comments at 1-2 (suggesting that the selection criteria should be neutral toward applicants and that applicants should have the necessary expertise to serve in these functions).

[43] CTIA Comments at 14.

[44] CTIA argues that "[w]hile ISO/IEC accreditation can be a helpful metric for organizations with limited practical experience, it can be costly and time-consuming to obtain and is unnecessary for prospective CLAs that have demonstrated track records in managing similar certification programs." CTIA Comments at 14.

[45] CTIA Comments at 14. *See also* CTIA Reply Comments at 2 ("the FCC should not require ISO/IEC accreditation for those CLA applicants that have significant experience functioning in a similar role.")

[46] A2LA Reply Comments at 1.

[47] *IoT Labeling Order* at 32-33, para. 59(6); 47 CFR § 8.220(c)(6).

[48] *IoT Labeling Order* at 38, para 68 (citing CTA Oct. 6, 2023 Comments at 18).

record of successfully managing a certification program.[49] The Commission recognized it would take time for selected CLAs to obtain ISO/IEC 17065 accreditation and for that reason found it appropriate to conditionally approve CLAs and allow an additional six months for selected administrators to obtain accreditation.[50] While we decline to adopt a blanket 18-month grace period, we are mindful that some entities may require more than six months to obtain accreditation. We think the Commission's existing rule waiver procedure[51] is an appropriate and sufficient vehicle for CLAs that cannot meet the accreditation deadline to request a waiver of the rule along with their requested extension period.

15. We also disagree with CTA's suggestion that conditional approval of CLA applications will allow CLAs to certify products to use the FCC IoT Label before obtaining ISO/IEC 17065 accreditation to the Commission's scope.[52] The Commission indicated that CLA applications will be conditionally approved in order to expedite initial deployment of the FCC's program.[53] However, CLAs that have not demonstrated that they have received ISO/IEC 17065 accreditation to the Commission's scope will not be recognized and approved by the Bureau to receive applications or otherwise approved to authorize use the FCC IoT Label.[54]

16. It is premature for the Bureau to address the specific scope of the Commission's accreditation program as the standards and testing procedures have not yet been adopted. However, we emphasize that each CLA will be required to obtain ISO/IEC 17065 accreditation to the FCC scope before it will be recognized by the Commission as an entity authorized to certify a product as being compliant with FCC IoT Labeling Program rules and authorize use of the FCC IoT Label consistent with the *IoT Labeling Order*.[55]

D. Lead Administrator Expenses Shared Among CLAs

17. The *June 2024 IoT Labeling Public Notice* sought recommendations for an effective mechanism for CLAs to share the Lead Administrator's expenses.[56] Parties are generally in agreement that Lead Administrator startup costs will be higher than the Lead Administrator's ongoing costs once the program is stood up and should be reflected in the CLA's cost sharing obligations.[57] UL Solutions recommends an initial standup fee for the Lead Administrator and a per-certificate fee going forward.[58]

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[49] CTIA Comments at 15 and CTIA Reply Comments at 2.

[50] *IoT Labeling Order* at 32-33, para 59(6).

[51] 47 CFR § 1.925.

[52] CTA Comments at 13. CTA also recommends the Bureau similarly conditionally approve CyberLABs to begin testing products before they become accredited and provide CyberLABs a 6-month grace period to obtain accreditation, which the Bureau declines to do. Letter from J. David Grossman, Vice President, Policy & Regulatory Affairs, CTA, and Mike Bergman, Vice President, Technology & Standards, CTA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 2 (filed Aug. 14, 2024) (CTA *Ex Parte*). CyberLABs are not authorized by the Commission to begin testing products for compliance with the IoT Labeling Program until after they have obtained the appropriate accreditation to the Commission's scope and have been recognized by the Lead Administrator. *See* 47 CFR § 8.218.

[53] 47 CFR § 8.220(c)(6).

[54] *IoT Labeling Order* at 32-33, para 59(6).

[55] *Id.* at 32-33, para. 59(6); 47 CFR § 8.220(c)(6).

[56] *June 2024 IoT Labeling Public Notice* at 6, para. 12.

[57] *See* ioXt Comments at 4 (fees may be higher during the initial rollout of the program, but should be lowered in the following year(s) as there will not be a need for as much 'set up' costs."); UL Comments at 2.

[58] UL Comments at 2.

The Wi-Fi Alliance recommends the Lead Administrator submit to the Bureau a claim for expenses incurred in the performance of its duties, which if approved, would be shared proportionally among the CLAs, with the proportionality being based on the annual number of products the CLA certifies to use the FCC IoT Label.[59] The Wi-Fi Alliance notes that Lead Administrator expenses subject to sharing by the CLAs should be limited to those "that are unique to the Lead Administrator *as Lead Administrator*,"[60] and not related to its activities as a CLA.

18. The Bureau recognizes that the Lead Administrator's expenses incurred as a result of the performance of its duties under this program must be reasonable and accurately reflect its actual costs. In addition, it is also important to ensure each CLA shares in the Lead Administrator's costs as required by the *IoT Labeling Order*[61] and that the costs shared reflect the Lead Administrator's actual and reasonable expenses incurred as a result of performance of its Lead Administrator duties and only those expenses incurred in its capacity as Lead Administrator. To ensure this occurs, the Lead Administrator is required to implement internal controls adequate to ensure its operations maintain best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. Once selected, the Lead Administrator will also submit to the Bureau and OMD, an estimate of its forward-looking costs including, separately, program stand-up costs and ongoing program costs to perform the Lead Administrator duties for the Lead Administrator's upcoming calendar year, which will be reviewed by CLAs, PSHSB, and OMD for reasonableness, and if determined to be reasonable by PSHSB and OMD, will be used to estimate the overall CLA cost sharing obligation.[62]

19. Consistent with the *IoT Labeling Order*, each CLA will share in these Lead Administrator costs, however, we decline to establish the methodology for such cost sharing and instead rely on CLAs and the Lead Administrator to determine the sharing methodology, which should be reasonable and equitable and will be subject to ongoing oversight by the Commission.[63] Further, we require the Lead Administrator to submit to the Bureau and OMD, an annual, independently audited, statement of program expenditures and monies received from the CLAs due before the end of the calendar

[59] Wi-Fi Alliance Comments at 4-5. The Wi-Fi Alliance notes the Commission has adopted a similar process requiring the Commission review costs as reasonable in other FCC-run programs, including the Commission's Universal Service Rules, (47 CFR §§ 54.701-54.717, 54.719-54.725) where the Commission reviews and approves projected quarterly budgets before the Universal Service Administrative Company (USAC) disburses funds and the white space rules (47 CFR §54.715), where the white space database administrator collects fees for its services as administrator, but the Commission "upon request will review the fees and can require changes in those fees if they are found to be excessive.'" Wi-Fi Alliance Comments at 5. The Wi-Fi Alliance also points to the Commission's Citizen Broadband Radio Service (CBRS) rules (47 C.F.R. § 96.65) where the Spectrum Access System administrators charge CBRS users a "reasonable fee" that is subject to review by the Commission. Wi-Fi Alliance Comments at 5.

[60] Wi-Fi Alliance Comments at 5-6.

[61] *IoT Labeling Order* at 47, para. 93.

[62] CTIA, and others, point out the need for federal funding to support core aspects of the program, such as consumer education. CTIA Comments at 3; CTIA Reply Comments at 3; CTA Comments at 15; NCTA Comments at 10. NCTA argues the Federal government should lead the consumer education campaign, which would reduce the burden on the Lead Administrator and CLAs. NCTA Comments at 5. However, both of these recommendations are beyond the Bureau's delegation of authority and the scope of this Public Notice.

[63] *See, e.g.*, ioXt Comments at 4 ("There should be a neutral oversight committee, such as The Bureau, who would review the expenses a Lead Admin would incur and guide a decision towards and appropriate amount to charge CLAs."); *see also* NCTA Comments at 5 (stating "the expense sharing mechanism [should] enable[] the Lead Administrator to recoup its costs and effectively support the Program's needs for maximum consumer benefit, while maintaining economic incentives for CLA and manufacturer participation").

year.[64] The Bureau will provide further guidance on CLA cost sharing once the CLAs and the Lead Administrator have been selected.[65]

E. Lead Administrator Neutrality

20. *Neutral Treatment of CLAs and Other Stakeholders.* In the *IoT Labeling Order*, the Commission recognized the competitive implications of an entity being both the Lead Administrator and a CLA.[66] The *June 2024 IoT Labeling Public Notice* sought comment on what safeguards, if any, the Bureau should adopt to ensure Lead Administrator neutrality as a potential competitor of other CLAs.[67] The Bureau also asked whether there are additional safeguards, beyond those contemplated in the *IoT Labeling Order*,[68] the Bureau should adopt to ensure the stakeholder engagement process and related recommendations the Lead Administrator makes to the Commission (*e.g.*, standards and testing criteria and label design) are consensus-based and competitively neutral.[69]

21. Commenters emphasize the importance of ensuring Lead Administrator neutrality to prevent actual, as well as perceptions of, unfair economic advantage by the Lead Administrator over other CLAs,[70] and support adopting reasonable safeguards to do so.[71] We share ioXt's concern that if the Lead Administrator gained an economic advantage by passing on fees to other CLAs, for example, CLAs would have to raise their prices, which would pass on the costs to the manufacturers, and then on to consumers.[72] In order to ensure impartiality, A2LA recommends considering ISO/IEC 17065 requirements, which describe a mechanism (often a committee) for safeguarding impartiality and assuring a competitively neutral environment between the Lead Administrator, CLAs, and other stakeholders.[73] TÜV SÜD also recommends that Lead Administrator neutrality be evaluated on a yearly basis, with the possibility of triggering an investigation by the Commission and revocation of Lead Administrator designation.[74] Infineon suggests requiring a "firewall" to separate the Lead Administrator from its role as CLA, similar to those instituted by law firms to avoid conflicts between multiple clients' interests.[75] Somos, Inc. recommends applying relevant rules from its role as the North American Numbering Plan

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[64] The Commission "delegated authority to the Bureau to release a Public Notice announcing the CLA(s) selected by the Bureau and next steps for each entity, including but not limited the execution of appropriate documentation governing the details of the CLA's responsibilities." *IoT Labeling Order* at 36, para 64.

[65] We thus leave pending the notice provided in this regard in the *June 2024 IoT Labeling Public Notice*.

[66] *See IoT Labeling Order* at 32, 36, paras. 59, 64 & n.237.

[67] *June 2024 IoT Labeling Public Notice* at 7, para. 13.

[68] *See* 47 CFR § 8.220(c)(8).

[69] *Id.*

[70] *See* TIC Council Americas Comments at 2 (TIC Comments); NCTA Comments at 6; Wi-Fi Alliance Comments at 6; ioXt Comments at 5; UL Comments at 4; Infineon Technologies Americas, Corp. Comments at 3 (Infineon Comments).

[71] *See* AHAM Comments at 1-2, Somos, Inc. Comments at 5 (Somos Comments).

[72] ioXt Comments at 5.

[73] A2LA Comments at 2.

[74] TÜV SÜD Comments at 2-3.

[75] Infineon Comments at 3.

Administrator to the Lead Administrator, including impartial allocation of resources, transparency, non-discrimination, avoidance of conflicts of interest, and compliance with regulations.[76]

22. We agree that ensuring Lead Administrator neutrality "is critical to maximizing the Program's credibility and fostering trust among stakeholders,"[77] and we believe the *IoT Labeling Order* sufficiently addresses the concerns raised in the record. We note that the requirement that the Lead Administrator be accredited to ISO/IEC 17065 will ensure that the entity is appropriately aligned with those impartiality mechanisms. Further, we require all CLA applicants, including those applying to be the Lead Administrator, to demonstrate implementation of controls to eliminate actual or potential conflicts of interests, including remaining impartial and unbiased.[78] The Bureau will evaluate such applications to ensure rigorous compliance with this criteria. We also note that approval of the Lead Administrator may be subject to withdrawal by the Commission upon a determination of just cause,[79] and this includes failing to follow those impartiality requirements. The Lead Administrator must be committed to neutrality and impartiality, consistent with the *IoT Labeling Order*.[80] Because we anticipate those measures will be sufficient, we are not persuaded of the need to adopt additional requirements at this time.

23. Finally, CTA proposes asking prospective CyberLABs and CLAs to attest that they meet the requirements in the (draft) CTA-2119 Scheme Assessment Framework, as an industry consensus standard to preserve neutrality when assessing applicant entities.[81] We decline to adopt this requirement at this time, given that the draft CTA-2119 Framework has not undergone public notice and comment.[82] However, we may reconsider this proposal at a later date, once the Labeling Program's standards and testing procedures have been finalized.[83]

24. *Transparency in 90-day Stakeholder Process*. As an initial matter, we emphasize that the *IoT Labeling Order* requires the Lead Administrator to "provide equitable recommendations to the Commission to encourage the broadest possible participation of CLAs within the parameters of the FCC's rules."[84] Therefore, while we believe it is premature to adopt additional rules in this regard, we note that UL Solutions emphasizes the importance of transparency in the stakeholder collaboration process, stating that the Lead Administrator should invite a wide variety of stakeholders and ensure they all have sufficient opportunity to have their views heard and participate in manageable working groups.[85] Further, UL Solutions states that recommendations made to the Commission should also include dissenting views and how those dissenting views were addressed, which would be considered in the final rules adopted by

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[76] Somos Comments at 3-4.

[77] NCTA Comments at 6.

[78] *See IoT Labeling Order* at 33, para. 59(7).

[79] *See* 47 CFR 8.220(e)(2)-(e)(5).

[80] *IoT Labeling Order* at 33, para. 59(7).

[81] CTA Comments at 13-14.

[82] *See* 5 U.S.C. § 553.

[83] CTA also proposes applying the CTA-2119 Scheme Assessment Framework as a uniform way to evaluate whether a scheme recommended by the Lead Administrator-led working group meets the NISTIR 8425 criteria required in the *IoT Labeling Order*. CTA Comments at 13. We similarly decline to adopt this proposal at this time.

[84] *IoT Labeling Order* at 36, para. 64.

[85] UL Comments at 4.

the Commission.[86] UL Solutions also recommends the importance of a clear and transparent process to shield the Lead Administrator from accusations or perceptions of bias when recognizing accredited CyberLABs.[87] TÜV SÜD similarly proposes safeguards, such as a mandatory consultation round before making critical decisions regarding recommendations to the Commission.[88]

25. While we do not adopt additional guardrails at this stage, we reiterate the position in the *IoT Labeling Order* that the Lead Administrator should ensure participation from a wide variety of stakeholders and consider various resources when developing the IoT Labeling Program recommendations.[89] As noted above, ISO/IEC 17065 accreditation is required for all CLAs, including the Lead Administrator, and adherence to that standard requires the convener of working groups to develop recommendations (here, the Lead Administrator), and achieve a balanced representation of interests, such that no single interest predominates.[90] We agree that transparency in the 90-day stakeholder process is of the highest importance and the Bureau expects to provide additional guidelines on that process when it announces the selection of CLAs and the Lead Administrator.[91]

F. Confidentiality and Security Requirements

26. The Bureau adopts its proposal from the *June 2024 IoT Labeling Public Notice* that manufacturer applications submitted to CLAs are presumptively confidential and CLAs are required to maintain this confidentiality.[92] CLAs will be required to maintain the confidentiality of non-public information received as part of an application for authority to use the FCC IoT Label, and must implement appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of information received by the CLA and protect against the unauthorized disclosure and unauthorized use of non-public information received as a result of its participation in the FCC IoT Labeling Program.

27. We agree with commenters that the program would benefit from a presumption of confidentiality for filings and related information provided to CLAs from applicants seeking use of the FCC IoT Label, which would encourage manufacturer participation and protect proprietary technology and trade secrets.[93] We disagree with commenters that such a presumption of confidentiality is not necessary due to the public-facing nature of the label.[94] While this is true for product information required to be disclosed in the registry if approval is granted,[95] this would not be the case for products that are denied authorization to bear the FCC IoT Label. In addition, as discussed above, we expect that

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[86] *Id.* at 4.

[87] *Id.* at 3.

[88] TÜV SÜD Comments at 2.

[89] *See IoT Labeling Order.* at 30-32, paras. 56-58. *See also* Wi-Fi Alliance Comments at 6 (agreeing that Lead Administrator neutrality should be ensured through disclosures of any associations that may materially impact their impartial administration and that their recommendations should be subject to review by the Bureau).

[90] *See id.*; ISO/IEC 17065, 5.2.2–5.2.4.

[91] We thus leave pending the notice provided in this regard in the *June 2024 IoT Labeling Public Notice*.

[92] *June 2024 IoT Labeling Public Notice* at 9, para. 17. *See also* CTA et al. Letter at 3 (recommending the Bureau treat manufacturer applications as presumptively confidential).

[93] *See* ITI Comments at 2; Logitech Comments at 1; NCTA Comments at 8; CTA Comments at 14. *See also* A2LA Comments at 3 (stating that conformity assessment bodies participating in the program should adhere to confidentiality requirements defined in ISO/IEC 17065).

[94] CR et al., Joint Comments.

[95] *See* UL Comments at 6.

applications submitted to the Commission by CLAs will also continue to be treated as presumptively confidential.[96] We emphasize here that information submitted by manufacturers to CLAs, the Lead Administrator, and/or CyberLABs, in the course of seeking authority to use the FCC IoT Label, including but not limited to applications and test reports, and information submitted to the Lead Administrator by a lab seeking recognition as a CyberLAB (i.e., authorized to conduct conformance testing under the Commission's IoT Labeling Program) are not agency records of the Commission. Only information submitted to the Commission, such as submissions in furtherance of applications by entities seeking authority from the Commission to be a CLA and/or Lead Administrator, are records of the Commission.

28. In the *June 2024 IoT Labeling Public Notice*, the Bureau tentatively concluded that the requirements of the Federal Information Security Modernization Act of 2014 (FISMA)[97] apply to the Lead Administrator and CLAs.[98] Some commenters oppose a FISMA requirement, stating that it would "strongly discourage CLAs from applying to the program,"[99] and that FISMA has not been applied by other agencies supporting analogous programs, such as the Health and Human Services Department's Office of the National Coordinator's (ONC) certification program for health IT products.[100] While we acknowledge these concerns, alone, they are not dispositive for not applying FISMA.

29. FISMA was enacted to ensure that each federal agency develops, documents, and implements an agency-wide program to secure federal information systems[101] from unauthorized access, use, disclosure, disruption, modification, or destruction.[102] Given this scope, we reconsider our tentative conclusion to apply FISMA to CLAs and the Lead Administrator and determine that, as presently contemplated, neither the CLAs nor the Lead Administrator will operate an information system on behalf of the agency. That is so because the Commission has no plans to establish any interconnection between its systems and the Lead Administrator's or CLA's information systems; indeed, the FCC does not expect to routinely request, obtain access to, otherwise collect, use, process, or maintain the data or information held by the Lead Administrator or the CLAs, excepting for investigative purposes. Moreover, although the Lead Administrator will receive information from CLAs and applicant manufacturers necessary for it to carry out its responsibilities under the FCC's program, and CLAs will receive and evaluate applications

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[96] *See* A2LA Comments at 3; Logitech Comments at 1.

[97] *Federal Information Security Management Act of 2002*, Pub. L. No. 107-347, 116 Stat. 2899 (2002); amended by *Federal Information Security Modernization Act of 2014* (FISMA), Pub. L. No. 113-283, 128 Stat. 3073 (Dec. 18, 2014).

[98] *June 2024 IoT Labeling Public Notice* at 9, para. 19. The *June 2024 IoT Labeling Public Notice* also asks whether "…the registry operator(s) [should] as appropriate, be required to implement adequate security, privacy, and availability controls to meet FISMA low/moderate standards, or a commercial equivalent?" *Id*. at 12, para 24. The Bureau recognizes the importance of the registry's security requirements, and will address these issues in a future Public Notice addressing the structure of the Registry's Application Programming Interface (API).

[99] ioXt Comments at 8. *See also* TIC Comments at 3-4 ("The additional burden of FISMA requirements will almost certainly reduce the willingness of potential applicants to participate in the program.").

[100] UL Comments at 6.

[101] FISMA defines a "Federal Information System" as "an information system used or operated by an executive agency, by a contractor of an executive agency, or by another organization on behalf of an executive agency." 40 U.S.C. § 11331(g)(2).

[102] *See* NIST, Computer Security Resource Center, *NIST Risk Management Framework*, *Federal Information Security Modernization Act (FISMA) Background*, https://csrc.nist.gov/projects/risk-management/fisma-background, (last accessed Aug. 22, 2024). *See also* 44 U.S.C. § 3552(b)(3) (stating "the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction").

and supporting data from applicant manufacturers, this, without more, does not mean that the Lead Administrator or CLAs are managing their information systems "on behalf of" the FCC.

30. Nevertheless, we agree with NCTA that "[c]lear guidelines, safeguards, and protocols for handling confidential information should be established to prevent unauthorized disclosure"[103] and believe that other mature security frameworks may be applied to CLAs and the Lead Administrator to reduce the risk of unauthorized access, use, disclosure, disruption, modification, or destruction of program data. Accordingly, we require that all CLAs and the Lead Administrator create, update, and implement cybersecurity risk management plans. Such a cybersecurity risk management plan must identify the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plans must also describe how each entity employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems. These requirements are consistent with the National Cyber Strategy and are in keeping with a whole-of-government effort to "establish cybersecurity requirements to support national security and public safety."[104] We expect that creating, updating, and implementing a cybersecurity risk management plan will help protect each CLA and the Lead Administrator from serious national security threats.

31. We note that, under this approach, each entity has flexibility to structure its cybersecurity risk management plan in a manner that is tailored to its operations after consideration of a variety of factors, provided that the plan demonstrates that the entity is taking affirmative steps to analyze security risks and improve its security posture. We further note that an entity could successfully demonstrate satisfaction with this requirement by following an established risk management framework, such as the NIST Cybersecurity Framework (CSF)[105] or Risk Management Framework (RMF).[106] CLAs and the Lead Administrator security plans should be informed by established cybersecurity best practices such as the standards and controls set forth in the Cybersecurity and Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives (CISA CPGs),[107] ISO/IEC 27001,[108] NIST Special Publication 800-53 (rev 5),[109] or the Center for Internet Security Critical Security Controls (CIS Controls) version 7.1 or later.[110] These frameworks are designed to be scalable and adaptable to the needs and capabilities of companies both large and small, are well understood by industry, and are flexible. CTIA and CTA argue compliance with a commercial equivalent framework to FISMA, such as ISO

[103] NCTA Comments at 8.

[104] White House, National Cyber Strategy at 8 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf.

[105] *See* NIST, The NIST Cybersecurity Framework (CSF) 2.0 (2024), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf.

[106] *See* NIST, *Risk Management Framework for Information Systems and Organizations*, Special Publication 800-37 (rev. 2 2018), https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-37r2.pdf.

[107] *See* Cybersecurity and Infrastructure Security Agency, Cross-Sector Cybersecurity Performance Goals and Objectives, https://www.cisa.gov/cpgs (last visited Mar. 15, 2024).

[108] *See* ISO/IEC 27001:2022, *Information security, cybersecurity and privacy protection — Information security management systems — Requirements*, https://www.iso.org/standard/27001.

[109] NIST, *Security and Privacy Controls for Information Systems and Organizations*, Special Publication 800-53 (rev. 5 2020); *see also* NIST *Control Baselines for Information Systems and Organizations*, SP-800-53B (2020).

[110] *See* Center for Internet Security, Critical Security Controls Version 8, https://www.cisecurity.org/controls (last visited Mar. 15, 2024) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

27001 can "take a year or more at a cost upwards of $100,000."[111] However, these cost and timelines would not apply to this program, because while we require entities to implement security plans reflecting standards and controls, such as ISO/IEC 27001, we do not specifically require a CLA or the Lead Administrator to be certified to ISO/IEC 27001. Moreover, we expect that many entities in the industry that might seek to be CLAs or the Lead Administrator will have adopted plans along the lines we require here and may have obtained such certifications in the ordinary course of business. And in any event, we find that any costs that might be incurred by an entity seeking to be a CLA or Lead Administrator are outweighed by the benefits that will redound to such entities themselves, the industry more broadly, and U.S. national security from our requiring such entities to take these steps to protect the confidentiality, integrity, and availability of the information they hold—including from other entities in the industry—and the information systems they maintain. We expect risk management plans to contribute to the CLAs' and the Lead Administrator's existing internal security practices that maintain the confidentiality, integrity, availability of all information received in support of this program without significantly increasing the time or costs of participation.[112]

32. We additionally require each applicant seeking to serve as a CLA or Lead Administrator to submit with its application an attestation that it already has created and implemented - or upon selection will create and implement - a cybersecurity risk management plan as described above - which will demonstrate compliance with these requirements as well as the entity's cybersecurity expertise and capabilities, knowledge of NIST's cybersecurity guidance, and knowledge of federal law and guidance governing the security and privacy of information systems.[113] We also require that CLAs and the Lead Administrator make such cybersecurity risk management plans available to the Commission upon request. Access to cybersecurity risk management plans will allow the Commission to confirm whether plans are being regularly updated, to review a specific plan as needed, or to proactively review a sample of plans to confirm they sufficiently identify the cybersecurity risks to the Lead Administrator and CLAs in this program. In such circumstances, cybersecurity risk management plans would be presumptively confidential.

III. WHO MAY APPLY

33. Any domestic, independent,[114] non-governmental entity eligible to enter into a licensing agreement with the FCC may apply for the role of CLA and/or Lead Administrator;[115] however, an applicant cannot be owned or controlled by, or affiliated with, any entity that produces equipment on the

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[111] CTIA Reply Comments at 9; CTA Comments at 10.

[112] We expect CLA and Lead Administrator applicants to address these internal security practices in their applications to the Commission, which will be enforceable under the Commission's rules. *See infra* para. 37.a. ("Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith, *see* 47 CFR §§ 1.17, 8.220, 8.221.").

[113] *See infra* Section IV.

[114] Here, "independent" means the applicant is not affiliated with or a subsidiary of another CLA/Lead Administrator applicant. *See IoT Labeling Order* at 32, 36, paras. 59, 64 & n.237. It also means that the applicant is a disinterested third-party outside of a prospective manufacturer's control that is applying for authority to use the FCC IoT Label. *See IoT Labeling Order* at 45, para. 87.

[115] The *IoT Labeling Order* declined to require that a CLA be a non-profit, stating that a for-profit or non-profit organization could possess the requisite qualifications and carry out the CLA duties effectively. *See IoT Labeling Order* at 35, para. 62. We note that Congress, from time to time, adopts appropriation riders that preclude federal agencies from entering into agreements with certain entities. *See e.g.* Section 744 and 745 of Title VII, Division B, of Further Consolidated Appropriations Act, 2024 –Pub. L. No. 118-47 (3/23/24) (precluding entering into agreements with corporations with certain felony convictions or unpaid Federal tax liability).

FCC Covered List or is otherwise prohibited from participating in the IoT Labeling Program, to include companies named on the Department of Commerce's Entity List and the Department of Defense's List of Chinese Military Companies.[116]

IV. APPLICATION PROCEDURES

A. Applications for Cybersecurity Label Administrator (CLA)

34. Applicants seeking the role of CLA must demonstrate the following:

a. Applicant is not owned or controlled by or affiliated[117] with any entity identified on the Commission's Covered List, or is otherwise prohibited from participating in the IoT Labeling Program,[118] including being an entity identified on the Department of Commerce's Entity List[119] or on the Department of Defense's List of Chinese Military Companies;[120]

b. Applicant 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;[121]

c. Description of Applicant's organization structure;[122]

d. Implementation of controls to eliminate actual or potential conflicts of interests (both personal and organizational), particularly with regard to commercially sensitive information, to include but not limited to, remaining impartial and unbiased and prevent Applicant from giving preferential treatment to certain applications particularly with regard to applicants from entities with whom the CLA has a business relationship (e.g., application line jumping or same level of scrutiny when

[116] *Id.* at 33, para 59(8).

[117] For purposes of the Commission's IoT labeling program, an *affiliate* is defined 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. The term *own* means to own an equity interest (or the equivalent thereof) of more than 10 percent. *See* 47 C.F.R. § 8.203(a); 47 U.S.C. § 153(2). *See also IoT Labeling Order* at 33, para. 59.

[118] *See IoT Labeling Order* at 33, 40, paras. 59, 74. The *Order* includes this catchall for entities otherwise prohibited from participating in the program, to include those listed in 47 CFR § 8.204 and those considered a "foreign adversary" country as defined by the Department of Commerce. *See id. See also id.* at 34-35, para. 61; 15 CFR § 7.4.

[119] *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.

[120] *See* Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. ("Mac") Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), Tranche 2, U.S. Department of Defense (2022), https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF.

[121] *See* U.S. General Services Administration System for Award Management, *Exclusion Types*, https://sam.gov/content/entity-information/resources/exclusion-types (last visited Feb. 15, 2024).

[122] In describing its organizational structure, an Applicant may describe its relevant expertise, processes, and key personnel that would support the CLA IoT Labeling Program requirements and responsibilities.

reviewing the application) and from implementing heightened scrutiny of applications from entities not members or otherwise aligned with the CLA;[123]

e. Description of the process(es) Applicant will use to evaluate applications seeking authority to use the FCC IoT Label;[124]

f. Cybersecurity expertise and capabilities, in addition to industry knowledge of IoT generally, and IoT Labeling requirements;

g. 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;

h. Expert knowledge of FCC rules and procedures associated with product compliance testing and certification;[125]

i. Knowledge of Federal law and guidance governing the security and privacy of agency information systems; and[126]

j. The ability to securely handle large volumes of information, including a description of Applicant's related internal security practices.

35. Applicants seeking the role of CLA must also commit to complying with the obligations of CLAs under the *IoT Labeling Order* and the Commission's rules, including but not limited to the following:[127]

a. Obtaining accreditation pursuant to all of the requirements associated with ISO/IEC 17065 with the forthcoming FCC program scope;[128]

b. The ability (*e.g.*, appropriate testing equipment, and personnel with the necessary technical expertise and training) to conduct post-market surveillance activities, such as audits, in accordance with ISO/IEC 17065;

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[123] In addition to demonstrating the relevant controls in place to avoid conflicts of interest, Applicants may also provide prior experience in avoiding personal and organizational conflict (e.g., history of, processes for, working with, certification labs on an equitable basis. *See* ISO/IEC 17065, § 4.2.2 Management of Impartiality ("The certification body shall be responsible for the impartiality of its certification activities and shall not allow commercial, financial or other pressures to compromise impartiality.").

[124] Applicants may describe existing data systems, personnel and other resources, processes (e.g., record-keeping etc.) in place or to be developed, for reviewing, accepting or denying applications to use the FCC IoT label in accordance with ISO/IEC 17065.

[125] For example, Applicants may describe their experience with the FCC's Equipment Authorization Program or another FCC-run compliance program. *See* 47 CFR part 2.

[126] *See, e.g.*, FISMA; Freedom of Information Act (FOIA); and the Open, Public, Electronic, and Necessary Government Data Act (OPEN Government Data Act).

[127] *See IoT Labeling Order* at 33-34, para. 59. CLAs must also comply with all requirements enumerated in 47 CFR § 8.220.

[128] *E.g.*, For purposes of conditional approval, applicants may meet this requirement by demonstrating they are certified to ISO/IEC 17065 under another scope. Alternatively, Applicants may outline a plan to receive ISO/IEC 17065 accreditation within six months of the effective date of the standards and testing procedures to be adopted under the forthcoming FCC program scope and demonstrate that their current or planned product testing processes align with ISO/IEC 17065. Each CLA must obtain 17065 accreditation to the FCC scope before it will be recognized by the Commission and authorized to begin processing applications to certify use of the FCC IoT Label.

c. Implementation of a process for receiving complaints alleging an IoT product does not support the cybersecurity criteria conveyed by the Cyber Trust Mark and referring those complaints to the Lead Administrator;

d. Collaborating with the Lead Administrator and other stakeholders to develop those items to be submitted to the Commission within 90 days of election of the Lead Administrator, and listed in 47 CFR § 8.221(a)(4); and

e. Being an active participant in the consumer education campaign led by and in coordination with the Lead Administrator.

A. Applications for Lead Administrator

36. In addition to the above requirements for CLA applications, Lead Administrator applicants must demonstrate the following:

a. Description of Applicant's previous experience in IoT cybersecurity;[129]

b. Description of Applicant's previous roles, if any, in IoT labeling;[130]

c. Description of Applicant's capacity (e.g., available resources, systems, infrastructure etc.), and commitment to execute the following Lead Administrator duties:[131]

i. Interfacing with the Commission on behalf of CLAs, which includes but is not limited to, submitting to the Bureau all complaints alleging a product bearing the FCC IoT Label does not meet the requirements of the Commission's labeling program;

ii. Conducting stakeholder outreach, coordinating with CLAs and other stakeholders, and moderating stakeholder meetings;

iii. Accepting, reviewing, and approving or denying applications from labs seeking recognition as a lab authorized to perform the conformity testing necessary to support an application for authority to affix the FCC IoT Label, and maintaining a publicly available list of Lead Administrator-recognized labs and a publicly available list of labs that have lost their recognition;

iv. Within 90 days of selection as Lead Administrator, in collaboration with the CLAs and other stakeholders (e.g., cyber experts from industry, government, and academia) submitting to the Bureau:

a) 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;

b) A recommendation 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, and that such a

[129] Where an Applicant describes previous experience or roles in IoT cybersecurity or IoT labeling, it may also describe how it expects to apply such previous experience to meet the Lead Administrator responsibilities.

[130] *E.g.*, Applicant may show a history of certifying IoT devices to a specific set of cybersecurity requirements. Alternatively, Applicant may show a history of certifying non-IoT devices to a designated cybersecurity scope.

[131] *See* 47 CFR § 8.221. Applicant may demonstrate relevant past experience, or otherwise provide a detailed plan to meet, each of the duties listed.

recommendation be submitted in connection with the relevant standards recommendations for an IoT product or class of IoT products;

c) A recommendation on procedures for post market surveillance by the CLAs;

d) 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; and

e) Recommendations with regard to updates to the registry including whether the registry should be in additional languages, and if so, to recommend specific languages for inclusion.

d. Recommending appropriate modifications to the IoT Labeling Program standards and testing procedures within 45 days of publication of updates or changes to the NIST guidelines, or adoption by NIST of new guidelines, to stay aligned with NIST guidelines;

e. Developing, in collaboration with CLAs and other stakeholders, a consumer education campaign, submitting the consumer education plan to the Bureau, and participating in consumer education;

f. Receiving complaints about the Labeling Program, including but not limited to consumer complaints about the registry and coordinating with manufacturers to resolve any technical problems associated with consumers accessing the information in the registry;

g. Facilitating coordination between CLAs; and

h. Submitting to the Commission any other reports upon request of the Commission or as required by Commission rule.

i. Any additional information Applicant believes demonstrates why they should be designated the Lead Administrator.

B. Required Certification Statements

37. All applications MUST include the following certification statements under penalty of perjury[132] or they will be dismissed:

a. Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith, see 47 CFR §§ 1.17, 8.220, 8.221.

b. Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to § 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. *See* 47 CFR § 1.2002(b) for the definition of "party to the application" as used in this certification.

[132] *See* 47 CFR § 1.16.

c. The Applicant certifies that it is not delinquent on any debts to the Commission, see 47 CFR § 1.1910.

d. Applicant acknowledges that willful false statements made on the application or on any attachments are punishable by fine and/or imprisonment (U.S. Code, Title 18, § 1001) and/or forfeiture (U.S. Code, Title 47, § 503).

C. The application must be signed and dated.

38. The Application must be signed and dated by the individual authorized to sign on behalf of the Applicant.[133] **FAILURE TO SIGN THE APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION.**

D. Application Submission.

39. The Bureau expects CLA and Lead Administrator applications and supporting documentation to be filed confidentially. Each page of the application must be clearly and conspicuously labeled "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION**." Applicant must file an original and one copy of each filing and supporting materials with the Office of the Secretary. All filings must reference **PS Docket No. 23-239** and be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery by commercial overnight courier, or First-Class or overnight U.S. Postal Service mail.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. 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 overnight deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service First-Class, Express, and Priority mail must be sent to 45 L Street NE, Washington, DC 20554.

40. An electronic version of the application and supporting material is required to be submitted to FCC staff as a .pdf file via email to CyberTrustMark@fcc.gov. **The document must be password protected and the password communicated in a separate email to** CyberTrustMark@fcc.gov. Submissions may be broken into multiple emails when necessary.

41. Applications should be received by the Commission as soon as possible, but no later than October 1, 2024. Applicants requiring additional time may request an extension of time for up to 10 additional calendar days to complete their applications. Applications received after October 1, 2024 from an entity that has not been approved an extension of time, will not be accepted and will be dismissed. Procedures for submitting applications are set forth below.

E. Additional Instructions to Assist with CLA and/or Lead Administrator Applications

- **Instructions.** General filing instructions are available in Appendix A.
- **Frequently Asked Questions (FAQs).** The FAQs are available at https://www.fcc.gov/CyberTrustMark.

[133] *See* 47 CFR § 1.52 ("If filed electronically, a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.").

- **FCC Notice Required by the Paperwork Reduction Act.** The FCC Notice Required by the Paperwork Reduction Act is available in Appendix D.

- **Privacy Act Statement.** The Privacy Act Statement is available in Appendix E.

- **Requirement for an FCC Registration Number (FRN).** We remind all applicants that they must have an FRN to file their applications. An FRN is the 10-digit number assigned to all individuals and entities that transact business with the Commission,[134] and it must be provided any time an applicant submits or updates their application.

- **Applicant Does Not Have an FRN.** If an applicant does not have an FRN, the applicant must obtain an FRN through the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.

    - For additional assistance, submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. ET).
    - If the applicant has further questions, an email can be sent to CyberTrustMark@FCC.gov.

- **Applicant has an FRN.** If an applicant has an FRN, the applicant must use that FRN with its application.

    - The applicant should not obtain a new FRN if Applicant already has an FRN.
    - An applicant can identify its FRN by accessing records the Commission's Registration Systems (CORES)[135] and click "Search". Individuals can search by name, or contact related information. Business organizations can search by name, Employer Identification Number (EIN), or contact-related information.

V. NEXT STEPS

42. After the application filing window closes October 1, 2024, the Bureau will review and evaluate properly filed applications. **The Bureau's selection of CLAs and a Lead Administrator will be announced by public notice.** The Public Notice will describe the next steps for selected entities, including but not limited to the execution of a licensing agreement and/or other appropriate documentation governing the details of the CLAs' and Lead Administrator's responsibilities and relationship to the Commission.[136]

VI. PROCEDURAL MATTERS

43. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[137] 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

[134] 47 CFR § 1.8002(a) ("The FRN must be obtained by anyone doing business with the Commission, see 31 U.S.C. § 7701(c)(2) . . . .").

[135] FCC User Registration System, available at https://apps2.fcc.gov/fccUserReg/pages/login.htm https://apps2.fcc.gov/fccUserReg/pages/login.htm (last accessed Aug. 15, 2024).

[136] *See IoT Labeling Order* at 36, para. 64.

[137] 5 U.S.C. § 603.

economic impact on a substantial number of small entities."[138] Accordingly, we have prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) concerning the possible impact of the rule changes contained in this Public Notice on small entities. The Supplemental FRFA is set forth in Appendix C.

44. *Paperwork Reduction Act.* This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

45. In this present document, we have assessed the effects of requiring CLAs to develop and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plans must also describe how the CLA employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems and find that Since applying to be a CLA is voluntary, small entities who do not apply to be a CLA will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Small entities that choose to apply to be a CLA, and whose applications are approved by the Bureau, will incur recordkeeping and reporting as well as other obligations to comply with the requirements we adopt in this Public Notice. We find that, for the FCC's IoT Labeling Program to have meaning for consumers, CLA requirements must be uniform for both small businesses and other entities. Thus, significance of program integrity, and building confidence among consumers that devices and products containing the Cyber Trust Mark label can be trusted to be cyber secure, necessitates adherence by all entities participating in the IoT Labeling Program to the same rules regardless of size.

46. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

47. *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).

48. *Additional Information.* For further information regarding this proceeding, please contact Drew Morin, Deputy Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau by email to Drew.Morin@fcc.gov or 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.

VII. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503 of the Communications Act of 1934, as amended, this *Public Notice* IS hereby ADOPTED.

[138] 5 U.S.C. § 605(b).

50. IT IS FURTHER ORDERED that the amendments of the Commission's Rules as set forth in Appendix B are ADOPTED, effective 30 days after publication in the Federal Register, except for the amendment to 47 CFR § 8.220(f)(14). The amendment to 47 CFR § 8.220(f)(14), which may contain modified information collection requirements, will not become effective until OMB completes any review that the Public Safety and Homeland Security Bureau determines is required under the Paperwork Reduction Act. The Public Safety and Homeland Security Bureau will announce effective dates for this section by publication in the Federal Register and by subsequent Public Notice.

51. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this *Public Notice*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

52. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this *Public Notice* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

APPENDIX A

GENERAL FILING INSTRUCTIONS

A. Provide All Information Requested: Applicants should provide all information requested by the application. If any portion of an application is not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.

B. Information Current and Complete: Information filed with the FCC must be kept current and complete. The Applicant must notify the FCC regarding any substantial and significant changes in the information furnished in the application. *See* 47 C.F.R. § 1.65.

C. Applicable Rules and Regulations: Applicants should obtain the relevant parts of the FCC's rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents; Government Printing Office; Washington, DC 20402; (202) 512-1800. Refer also to the Government Printing Office's website at http://www.access.gpo.gov. Some FCC Rules require the Applicant to attach one or more exhibits to an application in addition to the information requested in the application form.

D. Exhibits: Each document required to be filed as an exhibit should be current as of the date of the filing. Each page of every exhibit must be identified with the number or letter of the exhibit, and the total number of pages of the exhibit.

E. Confidentiality: Applications will be treated as presumptively confidential under the Commission's rules.

F. Explanatory Exhibits: Applicants may submit explanations and exhibits where necessary or appropriate. An inability to fully demonstrate satisfaction of all of the listed requirements will not cause *immediate* dismissal of the application provided that an explanatory exhibit is submitted.

G. Applicant Information: Applicant Name, Type, and Contact Information: The name of an applicant must be stated exactly. If the applicant is a corporation, the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name. Applicants should use only those state abbreviations approved by the U.S. Postal Service.

H. Contact Representatives: If the applicant is represented by a third party (for example, legal counsel) that will be engaging with the Commission related to its application, that person's name, firm or company, mailing address and telephone/electronic mail address must be specified.

I. Signature: The application must be signed by a person authorized to sign applications on behalf of the applicant and include that person's title. The signature certifies that all information provided on the application is true and correct and that the undersigned is in compliance with all of the General Certification Statements. Applications and amendments must be signed in accordance with part 1 of the FCC rules. The signor must be a person authorized by the applicant to sign the application.

J. False Statements: Willful false statements made in the application or any attachments are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001) and/or forfeiture (U.S. Code, Title 47, Section 503).

APPENDIX B

FINAL RULES

For the reasons set forth above, Part 8 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 8 – SAFEGUARDING AND SECURING THE INTERNET

1. The authority citation for part 8 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 163, 201, 202, 206, 207, 208, 209, 216, 217, 257, 301, 302a, 303, 304, 307, 309, 312, 316, 332, 403, 501, 503, 522, 1302, 1753.

Subpart B—Cybersecurity Labeling Program for IoT Products

2. Add § 8.220(f)(12) – (14) as follows:

§ 8.220 Requirements for CLAs.

(12) A CLA shall share the Lead Administrator's expenses incurred as a result of the Lead Administrator's performance of its duties under the FCC IoT Labeling Program.

(i) The Lead Administrator expenses subject to sharing by CLAs are those expenses determined to be reasonable by the Public Safety and Homeland Security Bureau and the Office of Managing Director.

(ii) A CLA shall share Lead Administrator expenses pursuant to a methodology agreed to by the CLAs and the Lead Administrator subject to ongoing oversight by the Commission.

(13) A CLA shall maintain the confidentiality of non-public information received as part of an application for authority to use the FCC IoT Label, and will implement appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of information received by the CLA and protect against the unauthorized disclosure and unauthorized use of non-public information received as a result of its participation in the FCC IoT Labeling Program.

(14) A CLA shall create, update, and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plan must also describe how the CLA employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems. The CLA's cybersecurity risk management plan must be available to the Commission upon request.

3. Add § 8.221(a)(11) – (14) as follows:

§ 8.221 Requirements for the Lead Administrator.

(11) Create, update, and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plan must also describe how the Lead Administrator employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems. The Lead Administrator's cybersecurity risk management plan must be available to the Commission upon request;

(12) Submit to the Public Safety and Homeland Security Bureau and the Office of the Managing Director, an estimate of its forward-looking costs including, separately, program stand-up costs and ongoing program costs to perform the Lead Administrator duties for the Lead Administrator's upcoming calendar year, which will be reviewed by the Cybersecurity Labeling Administrators, Public Safety and Homeland Security Bureau, and the Office of the Managing Director for reasonableness, and if reasonable, will be used to estimate the overall CLA cost sharing obligation;

(13) Implement internal controls adequate to ensure its operations maintain best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds; and

(14) Submit to the Public Safety and Homeland Security Bureau and the Office of the Managing Director, an annual, independently audited, statement of program expenditures and monies received from the CLAs due before the end of the Lead Administrator's calendar year.

APPENDIX C

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Public Safety and Homeland Security Bureau Requests Comment on Implementation of the Cybersecurity Labeling for Internet of Things Program* Public Notice (*June 2024 IoT Labeling Public Notice*) released in June 2024.[2] The Public Safety and Homeland Security Bureau (Bureau) sought written public comment on the proposals in the *June 2024 IoT Labeling Public Notice*, including comment on the IRFA. No comments were filed addressing the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in this *Public Notice*, and supplements the Final Regulatory Flexibility Analysis completed by the Federal Communications Commission (Commission or FCC) in the *Cybersecurity Labeling for Internet of Things* Report and Order and Further Notice of Proposed Rulemaking (*IoT Labeling Order*). This present Supplemental FRFA conforms to the RFA.[3]

A. Need for, and Objectives of, the Public Notice

2. In the *IoT Labeling Order*, adopted in March 2024, the Commission established a framework for a voluntary cybersecurity labeling program for consumer wireless Internet of Things (IoT) products (IoT Labeling Program),[4] which includes selecting third party administrators to support the program.[5] The Commission delegated authority to the Bureau to open an initial filing window to receive applications from entities seeking authority to be recognized as a CLA (Cybersecurity Labeling Administrator) and those seeking to be recognized as the Lead Administrator.[6] CLAs approved by the Commission will authorize use of the FCC IoT Label, which includes the U.S. government certification mark (U.S. Cyber Trust Mark), by manufacturers whose products are found to be in compliance with the Commission's IoT cybersecurity labeling program rules.[7] The Lead Administrator will, among other duties, act as liaison between the Commission and CLAs, conduct stakeholder outreach to identify and/or develop and recommend to the Bureau technical standards and testing procedures for at least one class of IoT products, and in collaboration with CLAs, the FCC, and other stakeholders develop and execute a plan for a consumer education campaign.[8]

3. In today's Public Notice, the Bureau addresses comments filed in response to the Bureau's proposals in the *June 2024 IoT Labeling Public Notice* to further the efficient and timely rollout of the *IoT Labeling Order* and IoT Labeling Program. The Bureau announces that the 15-business day

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

[3] 5 U.S.C. § 604.

[4] *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) (*IoT Labeling Order*).

[5] *IoT Labeling Order* at 26, para. 48.

[6] *Id.* at 36, para. 64. The *IoT Labeling Order* also delegated authority to the Bureau to open additional filing windows or otherwise accept additional applications for authority to be recognized by the Bureau as a CLA when and as the Bureau determines it is necessary. *Id.*

[7] *Id*. at 26-27, para. 48.

[8] *Id*. at 27-29, para. 52.

filing window for applications from entities seeking designation by the Commission as a CLA and Lead Administrator **will open on September 11, 2024 and close on October 1, 2024**. The Bureau also provides determinations regarding application format, filing fees, selection criteria, and Lead Administrator neutrality, and adopts rules regarding CLA sharing of Lead Administrator program costs, confidentiality of information CLA receives, creation and implementation of cybersecurity risk management plans by CLAs and the Lead Administrator, and the requirement that the Lead Administrator implement internal controls to prevent fraud, waste, and abuse in its handling of funds, and submit an annual audited statement of program expenditures and monies received from CLAs.

4. To encourage manufacturer participation in the IoT Labeling Program and safeguard proprietary technology and trade secrets, in the Public Notice we adopt requirements for CLAs, including the Lead Administrator, to maintain the confidentiality of non-public information received as part of an application for authority to use the FCC IoT Label, and implement appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of information received by the CLA, and protect against the unauthorized disclosure and unauthorized use of non-public information received as a result of its participation in the FCC IoT Labeling Program. Additionally, we require CLAs, including the Lead Administrator, to create, update, and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. We also require the Lead Administrator to implement financial controls, which will further increase the integrity of the program by ensuring the Lead Administrator's costs, which are to be shared among the CLAs, are estimated in advance and evaluated for reasonableness, and ensuring the Lead Administrator is a good steward of funds it receives from CLAs to support its role as Lead Administrator.

5. The IoT Labeling Program will provide consumers with an easy-to-understand indicator of a product's relative cybersecurity, and improve consumer confidence and understanding of IoT product cybersecurity. Consumer IoT products are susceptible to a wide range of security vulnerabilities that can be exploited by attackers to gain unauthorized access to the IoT product and its data. Providing customers with an easy-to-understand label indicating that an IoT product has satisfied baseline cybersecurity standards allows them to understand the relative security risk that an IoT product may pose when making a purchase.

A. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments filed that specifically address the proposed rules and policies in the IRFA.

B. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[9] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein.[10] The RFA generally

[9] 5 U.S.C. § 604(a)(3).

[10] *Id.* § 604(a)(4).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[11] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[12] 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.[13]

9. As noted above, a regulatory flexibility analysis was incorporated into the *IoT Labeling Order*. The *IoT Labeling Order* provides the underlying authority for the procedures proposed in the *June 2024 IoT Labeling Public Notice*, and that are adopted in today's Public Notice for the IoT Labeling Program. In the *IoT Labeling Order* regulatory flexibility analysis, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous regulatory flexibility analysis in the *IoT Labeling Order*.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The Commission's *IoT Labeling Order* adopted the operational framework for a voluntary IoT cybersecurity labeling program. The IoT Labeling Program framework incorporates, and is consistent with, certain National Institute of Standards and Technology (NIST) guidelines and protocols as part of the Commission's recognition that public-private collaboration that leverages the expertise and existing frameworks of the federal government, industry, and other stakeholders is necessary for the success of its voluntary IoT Labeling Program. The Commission will be the IoT Labeling Program owner and retain ultimate control over the IoT Labeling Program, however, CLAs and the Lead Administrator will carry out responsibilities such as management of day-to-day functions, and development of processes, standards, and testing to be approved by the Commission. Since the IoT Labeling Program is voluntary, small entities who do not participate in the IoT Labeling Program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Moreover, small entities who do not wish to apply for selection as a CLA or Lead Administrator will also not be subject to any new or modified compliance obligations arising from today's Public Notice. Those small entities that choose to participate in the IoT Labeling Program by applying for selection as a CLA, or the Lead Administrator will incur recordkeeping, reporting, and other compliance obligations in the course of applying and, if selected, carrying out the responsibilities required in the *IoT Labeling Order*.[14]

11. The *IoT Labeling Order* contemplated that small entities may choose to file applications for the roles of CLA and Lead Administrator, which today's Public Notice clarifies will be in the form of a narrative application demonstrating their relevant qualifications and experience as set out in the *IoT Labeling Order*,[15] and the application procedures adopted in today's Public Notice. In accordance with our determination that a CLA and Lead Administrator application and supporting documentation will be treated as presumptively confidential, each page of an applicant's submission must be clearly and conspicuously labeled "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION**." CLA and Lead

[11] 5 U.S.C. § 601(6).

[12] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[13] 15 U.S.C. § 632.

[14] *See IoT Labeling Order* at 27-32, paras. 51-58.

[15] *See IoT Labeling Order* at 32-35, paras. 59-62; 47 CFR §§ 8.220(c); 8.221(b).

Administrator applications must be filed with the Office of the Secretary either via hand or messenger delivery, by commercial overnight courier, or First-Class or overnight U.S. Postal Service mail. A copy of the application and supporting documentation must be sent to the Bureau via email in a password protected .pdf file. Applications must be signed and dated by the individual authorized to sign on behalf of the Applicant, and must certify that all statements made in the application and any accompanying exhibits, attachments, or documents incorporated by reference are material, are part of the application, and are true, complete, correct, and made in good faith.[16] Applicants must also certify that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to § 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance,[17] that the Applicant is not delinquent on any debts to the Commission,[18] and that the Applicant acknowledges that willful false statements made on the application or on any attachments are punishable by fine and/or imprisonment and/or forfeiture.[19]

12. If selected to be a CLA or the Lead Administrator, small entities and others will be required to create, update, and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plan must also describe how the CLA employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems. The CLA's cybersecurity risk management plan must be available to the Commission upon request. If selected to be the Lead Administrator, the selected entity will also be required to submit to the Bureau, and the Office of the Managing Director (OMD), an estimate of its forward-looking costs including, separately, program stand-up costs and ongoing program costs to perform the Lead Administrator duties for the Lead Administrator's upcoming calendar year; implement internal controls adequate to ensure its operations maintain best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds; and submit to the Bureau and OMD, an annual, independently audited, statement of program expenditures and monies received from the CLAs due before the end of the Lead Administrator's calendar year.

13. Regarding compliance costs for small entities that could result from the requirements adopted in today's Public Notice, the record does not include sufficient cost information 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. The Bureau notes however, we reduce the cost of the application process for small and other CLA or the Lead Administrator applicants by not imposing the application fees we contemplated in the *June 2024 IoT Labeling Public Notice.* We also note the requirement for selected CLAs and Lead Administrators to create, implement and submit a cybersecurity risk management plan gives small and other entities the flexibility to structure its cybersecurity risk management plan based on its operational and financial needs, as long as that the plan demonstrates that the entity is taking affirmative steps to analyze security risks and improve its security posture. Further small and other entities have the ability to utilize industry established and recognized, scalable and adaptable risk management frameworks to meet our requirements. Therefore, the Bureau does not anticipate that small entities serving as a CLA or the Lead Administrator will need to hire outside cybersecurity consultants or other professionals to comply with the cybersecurity risk management plan requirements adopted in today's Public Notice. CLAs and Lead Administrators should be able to develop their risk management plans without hiring specialized consultants based on how they currently identify cybersecurity risks, the controls used to mitigate those risks, and the methods used to ensure that these

[16] *See* 47 CFR §§ 1.17, 8.220, 8.221.

[17] *See* 47 CFR § 1.2002(b) for the definition of "party to the application" as used in this certification.

[18] *See* 47 CFR § 1.1910.

[19] *See* 18 U.S.C. § 1001; 47 U.S.C. § 503.

controls are effective.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[20]

15. The Bureau has taken steps to minimize the economic impact of our IoT Labeling Program requirements as a general matter, and in some cases, for small entities, specifically. As mentioned in the previous section, the Bureau declined to adopt the filing fee for CLA ($1,520) and Lead Administrator ($2,290) applications that we proposed in the *June 2024 IoT Labeling Public Notice*. Moreover, application filing procedures required in today's Public Notice build on a framework for filing confidential materials that the Commission has used in the past which small entities may already be familiar with and have utilized.[21] Further, maintaining the presumptive confidentiality of applications filed in the CLA and Lead Administrator application process the Bureau will protect the economic interests of small entities' and others' proprietary technology and trade secrets. Additionally, to aid in the creation of CLA and Lead Administrator applications, the Bureau has also offered a number of examples of criteria that can be used to comply with the application requirements enumerated in today's Public Notice. Applicants whose applications require further attention may communicate with the Bureau to provide additional information or clarification as needed to complete their application.

16. The Bureau's decision to require cybersecurity risk management plans based on established risk management frameworks such as the NIST Cybersecurity Framework or Risk Management Framework will also minimize the economic impact on small and other entities selected to serve as CLAs or the Lead Administrator. Small entities will likewise benefit economically from the Bureau's decision to reconsider our tentative conclusion in the *June 2024 IoT Labeling Public Notice* to apply the Federal Information Security Modernization Act of 2014 (FISMA) to CLAs and the Lead Administrator, and decline to require compliance with FISMA, which would have been significantly more burdensome for small entities. The Bureau also considered but declined to adopt additional selection criteria for CLA and Lead Administrator applicants, or additional safeguards to ensure the stakeholder process remains competitively neutral beyond the requirements adopted in the *IoT Labeling Order*.

F. Report to Congress

17. The Commission will send a copy of the *Public Notice*, in a report to Congress pursuant to the Congressional Review Act.[22] In addition, the Commission will send a copy of the *Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Public Notice* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[23]

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[20] 5 U.S.C. § 604(a)(6).

[21] *See, e.g.*, *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361 (Mar. 31, 2020).

[22] 5 U.S.C. § 801(a)(1)(A).

[23] *Id.* § 604(b).

Approved by OMB
OMB Control Number 3060-1328
July 2024
Estimated Time per Response – 14 hours

APPENDIX D

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 20 hours per CLA response and 10 additional annual burden hours per Lead Administrator response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD−PERM, Paperwork Reduction Project (3060-1328), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. **PLEASE DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS.**

Remember − You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-1328.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104−13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Approved by OMB
OMB Control Number 3060-1328
July 2024
Estimated Time per Response – 14 hours

APPENDIX E

PRIVACY ACT STATEMENT

Authority: The FCC is authorized to collect the information pursuant to the authority contained in sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. § 278g-3a to § 278g-3e.

Purpose: The information collected in this Application includes contact and certification information from entities voluntarily applying to serve as Lead Administrator or CLA in this FCC program. The information is used to communicate with such entities and enforce their compliance with statements made in their applications.

Routine Uses: While Lead Administrator and CLA applications will be presumed confidential, in addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act of 1974, as amended, the FCC may disclose contact and certification information collected from applicants as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. § 552a(b)(3), including: to authorized third parties to administer, support, participate in, or receive information related to FCC programs and activities; to other Federal agencies in order to administer, support, participate in, or receive information related to FCC programs and activities; and to non-federal personnel, including contractors, who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

A full, detailed list of the routine uses is published in the system of records notice associated with this collection, FCC-2, Business Contacts and Certifications, which is available at https://www.fcc.gov/sites/default/files/sor-fcc-2.pdf.

Disclosure: This information collection is voluntary. The Public Safety and Homeland Security Bureau's Public Notice provides entities the opportunity to apply to be designated a Cybersecurity Labeling Administrator and the opportunity to apply to be designated a Lead Administrator.

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

In the Matter of	)	
	)	
Antelecom, Inc.	)	File No.: EB-IHD-24-00036660
	)	NAL/Acct. No.: 202432080028
	)	FRN: 0016088924

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against Antelecom, Inc. (Antelecom or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Antelecom's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Antelecom is a California corporation that provides facilities-based fixed BIAS to residences and businesses in northern Los Angeles County, California.[10] The Company holds 12 FCC licenses in the Microwave Industrial/Business Pool.[11]

8. Antelecom failed to submit its availability and subscription data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided Antelecom with several notices regarding the requirement to file the

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* State of California, Secretary of State, Statement of Information, Antelecom Inc., File No. 2038204 (initial filing date Mar. 25, 1998), https://bizfileonline.sos.ca.gov/search/business (last visited Jul. 31, 2024); Antelecom, Connecting Made Easy, https://antelecom.net (last visited Jul. 31, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Antelecom, Inc., Call Signs WQPQ983, WQPT331 , WQPW934 , WQPW937, WQUA902, WQUF231, WQUF233, WQWV610, WQXD767, WRPT623, WRPT624, WRPT631. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Jul. 31, 2024).

Company's BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Antelecom on June 5, 2023 and left a voicemail, and when OEA called again on September 18, 2023, a Company representative stated she would email two officers of the Company to coordinate an intra-Company meeting about the need to submit the BDC data.[13] Additionally, OEA emailed Antelecom on March 23, 2023 and July 19, 2023 using the contact information that Antelecom registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Antelecom a letter warning that failure to file the required availability and subscription data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Antelecom is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Antelecom failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, Antelecom has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Antelecom apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Antelecom to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to Lisa Watkins, Antelecom (Sept. 18, 2023) (on file at EB-IHD-24-00036660).

[14] Email from OEA, FCC, to Antelecom (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to Antelecom (Jul. 19, 2023, 3:04 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Antelecom (Jul. 11, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Antelecom apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Antelecom of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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

(continued…)

15. Within the past 12 months, Antelecom failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find Antelecom apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which Antelecom is apparently liable.[32]

IV. CONCLUSION

17. We have determined that Antelecom apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Antelecom is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, Antelecom, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Antelecom, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for Antelecom, Inc., to pay the proposed forfeiture, Antelecom, Inc., shall notify the Enforcement Bureau at IHDTelecom@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, Antelecom, Inc., shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank

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our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[30] The Company also failed to file a BDC report that was due March 1, 2023, but we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 Glenford Carty, Chief Executive Officer, and Rebeca Najar, Antelecom, Inc., 44931 10th St. West, Lancaster, CA 93534.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
BySky Inc.	)	File No.: EB-IHD-24-00036664
	)	NAL/Acct. No.: 202432080029
	)	FRN: 0014778781

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against BySky Inc. (BySky or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on BySky's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. BySky is a Delaware corporation that provides facilities-based fixed BIAS to residences and businesses in Fremont County, Colorado.[10] The Company holds three FCC licenses in the Microwave Industrial/Business Pool.[11]

8. BySky failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided BySky with several notices regarding the requirement to file the Company's BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Delaware Secretary of State, BySky Incorporated, File No. 3384289 (formed Apr. 24, 2001), https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (last visited Aug. 8, 2024); http://bysky.com/ (last visited Aug. 8, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, BySky Inc., Call Signs WRFL393, WRFL394, WRFL410. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Aug. 15, 2024).

months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned BySky on June 2, 2023,[13] and OEA emailed BySky on March 23, 2023 and July 19, 2023 using the contact information that BySky registered in the BDC system.[14] The Commission's Enforcement Bureau also sent BySky a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, BySky is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, BySky failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, BySky has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find BySky apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like BySky to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to John Waters, BySky (Jun. 2, 2023), in File No. EB-IHD-24-00036664.

[14] Email from OEA, FCC, to BySky (Mar. 23, 2023, 1:07 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to BySky (Jul. 19, 2023, 3:08 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to BySky (Jul. 11, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that BySky apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against BySky of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, BySky failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find BySky apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which BySky is apparently liable.[32]

IV. CONCLUSION

17. We have determined that BySky apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, BySky is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, BySky Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, BySky Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for BySky Inc., to pay the proposed forfeiture, BySky Inc., shall notify the Enforcement Bureau at IHDTelecom@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, BySky Inc., shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned

[30] The Company also failed to file a BDC report that was due March 1, 2023, but we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 John R. Waters, President, BySky Inc, 2075 Cañon Ridge Trail, Cañon City, CO 81212.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
Centex Web Access	)	File No.: EB-IHD-24-00036666
	)	NAL/Acct. No.: 202432080030
	)	FRN: 0022326730

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against Centex Web Access (Centex or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Centex's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Centex is a Texas sole proprietorship that provides facilities-based fixed BIAS to residences and businesses in Central Texas.[10] The Company holds eight FCC licenses in the Microwave Industrial/Business Pool.[11]

8. Centex failed to submit its availability data in the to the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided Centex with several notices regarding the requirement to file the Company's BDC

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Comprehensive Business Report, Centex Web Access, Falls County Texas, Filing No. TX 0160296100 (est. 2002), https://clear.thomsonreuters.com (accessed Aug. 15, 2024); https://www.ctwa.com (last visited Aug. 15, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Centex Web Access, Call Signs WRCV556, WRCV557, WRCV558, WREA704, WREA712, WREA713, WREE600, WRHY980. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Aug. 15, 2024).

availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Centex on June 8, 2023,[13] and OEA emailed Centex on March 23, 2023 and July 19, 2023 using the contact information that Centex registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Centex a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Centex is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Centex failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, Centex has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Centex apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Centex to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to Randel Brown, Centex Web Access (Jun. 8, 2023), in File No. EB-IHD-24-00036682.

[14] Email from OEA, FCC, to Centex (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to Centex (Jul. 19, 2023, 3:08 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Centex (Jul. 11, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Centex apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Centex of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, Centex failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find Centex apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which Centex is apparently liable.[32]

IV. CONCLUSION

17. We have determined that Centex apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Centex is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, Centex Web Access is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Centex Web Access **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for Centex Web Access to pay the proposed forfeiture, Centex Web Access, shall notify the Enforcement Bureau at IHDTelecom@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, Centex shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned

[30] The Company also failed to file a BDC report that was due March 1, 2023, but we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 Randel Brown, Owner, Centex Web Access, 121 Live Oak St., Marlin, TX 76661.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
Lobo Internet Services, Ltd.	)	File No.: EB-IHD-24-00036682
	)	NAL/Acct. No.: 202432080031
	)	FRN: 0016096711

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against Lobo Internet Services, Ltd. (Lobo or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Lobo's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

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[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

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6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Lobo is a New Mexico corporation that provides facilities-based fixed BIAS to residences and businesses in Albuquerque and the East Mountain area of New Mexico.[10] The Company holds 31 FCC licenses in the Microwave Industrial/Business Pool.[11]

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

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[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* New Mexico Secretary of State, Lobo Internet Svcs., Ltd., File No. 1794718 (formed May 8, 1996), https://portal.sos.state.nm.us/BFS/online/CorporationBusinessSearch (last visited Aug. 15, 2024); https://www.lobo.net/ (last visited Aug. 15, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Lobo Internet Services, Ltd., Call Signs WQJS763, WQJS764, WQJT869, WQQD251, WQQX965, WQQX968, WQQX969, WQQX970, WQQX971, WQUS752, WQVF672, WQVF673, WQVF674, WRDU288, WRDU289, WRED872, WREK823, WREK824, WREK825, WREK826, WREK827, WREK828, WREK829, WREK830, WRFY535, WRHV343, WRKK725, WROL852, WRQX230, WRTD322, WRUP844. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Aug. 15, 2024).

8. Lobo failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided Lobo with several notices regarding the requirement to file the Company's BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Lobo on June 5, 2023,[13] and OEA emailed Lobo on March 23, 2023 and July 19, 2023 using the contact information that Lobo registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Lobo a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Lobo is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Lobo failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, Lobo has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Lobo apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Lobo to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to Carl Muehlenweg, Lobo Internet Services, Ltd. (Jun. 5, 2023), in File No. EB-IHD-24-0003668.

[14] Email from OEA, FCC, to Lobo Internet Services, Ltd. (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to Lobo Internet Services, Ltd. (Jul. 19, 2023, 3:08 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Lobo Internet Services, Ltd. (Jul. 11, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Lobo apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Lobo of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, Lobo failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find Lobo apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which Lobo is apparently liable.[32]

IV. CONCLUSION

17. We have determined that Lobo apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Lobo is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, Lobo Internet Services, Ltd., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Lobo Internet Services, Ltd., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for Lobo Internet Services, Ltd., to pay the proposed forfeiture, Lobo Internet Services, Ltd., shall notify the Enforcement Bureau at IHDTelecom@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, Lobo Internet Services, Ltd., shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned

[30] The Company also failed to file a BDC report that was due March 1, 2023, but we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 Carl Muehlenweg, President, Lobo Internet Services, Ltd., 2419 San Pedro Drive NE, Albuquerque, NM 87110.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
Mobile Communications LLC	)	File No.: EB-IHD-24-00036685
	)	NAL/Acct. No.: 202432080032
	)	FRN: 0016635740

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $15,000 against Mobile Communications LLC (Mobile or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Mobile's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Mobile is a Mississippi limited liability company that provides facilities-based fixed BIAS to residences and businesses in Mississippi, Louisiana, and Arkansas.[10] The Company holds two FCC licenses in the Microwave Industrial/Business Pool and one license in the Industrial/Business Pool.[11]

8. Mobile failed to submit its availability data in the to the BDC system for two filing rounds that were due to the Commission on March 1, 2023, and September 15, 2023. The Commission provided Mobile with several notices regarding the requirement to file the Company's BDC availability

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Mississippi Secretary of State, Mobile Communications LLC, Business ID No. 935028 (formed Jul. 11, 2008), https://corp.sos.ms.gov/corp/portal/c/page/corpBusinessIdSearch/portal.aspx (last visited Aug. 16, 2024); https://mobilecommllc.com/ (last visited Aug. 16, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Mobile Communications LLC, Call Signs WRJZ670, WRJZ671, WRMI693. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Aug. 15, 2024).

and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Mobile on June 12, 2023,[13] and OEA emailed Mobile on March 23, 2023, using the contact information that Mobile registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Mobile a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Mobile is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Mobile failed to file its broadband service availability and subscription data on March 1, 2023, and September 15, 2023. Further, Mobile has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Mobile apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Mobile to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to Mobile Comms. (Jun. 12, 2023) (left voicemail), in File No. EB-IHD-24-00036685.

[14] Email from OEA, FCC, to Mobile Comms. (Mar. 23, 2023, 12:41 PM) (notifying Company of the mandatory BDC filing requirement).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Mobile Comms. (Jul. 12, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Mobile apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, and September 15, 2023.[19]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[20] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mobile of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[21] 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."[22] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[23] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[24]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[25] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[26] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[27] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[28]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023). *See also* §§ 1.7004(b), 1.7001(b).

[20] 47 U.S.C. § 503(b)(1)(B).

[21] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[22] 47 U.S.C. § 503(b)(2)(E).

[23] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[24] *Id*.

[25] 47 CFR §1.7009(b).

[26] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[27] 47 CFR § 1.80(b).

[28] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, Mobile failed to file one BDC report that was due September 15, 2023.[29] Therefore, we find Mobile apparently violated sections 1.7004(b) and 1.7001(b) one time. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules to Mobile's failure to file BDC data, we propose a total base forfeiture of $15,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[30] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $15,000, for which Mobile is apparently liable.[31]

IV. CONCLUSION

17. We have determined that Mobile apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Mobile is apparently liable for a forfeiture of $15,000.

V. ORDERING CLAUSES

18. 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, Mobile Communications LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Fifteen Thousand Dollars ($15,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Mobile Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for Mobile Communications LLC to pay the proposed forfeiture, Mobile Communications LLC shall notify the Enforcement Bureau at IHDTelecom@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, Mobile Communications LLC shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[32]

- 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

[29] The Company also failed to file a BDC report that was due March 1, 2023, however we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[30] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[31] 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.

[32] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[33] or printed CORES form[34] 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).[35] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. 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.[36] 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.

22. 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.[37] 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

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

[34] 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.

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

[36] *See* 47 CFR § 1.1914.

[37] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[38] 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.[39]

24. **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 Bobby Norwood, Owner, Mobile Communications LLC, 105 Highway 7 South, Greenwood, MS 38930.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[38] 47 U.S.C. § 503(b)(2)(E).

[39] *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).

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

In the Matter of	)	
	)	
National Telecom, LLC	)	File No.: EB-IHD-24-00036687
(d/b/a Metro Wireless)	)	NAL/Acct. No.: 202432080033
	)	FRN: 0031654841

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against National Telecom, LLC d/b/a Metro Wireless (National Telecom or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on National Telecom's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. National Telecom is a Michigan limited liability company that provides facilities-based fixed BIAS and other services to businesses in Wayne, Oakland, and Macomb Counties in Michigan.[10] The Company holds 40 FCC licenses in the Microwave Industrial/Business Pool.[11]

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Michigan Secretary of State, National Telecom, LLC, ID No. 802750924 (organized Oct. 19, 2021), https://cofs.lara.state.mi.us/SearchApi/Search/Search (last visited Aug. 16, 2024); https://www.metrowireless.com/ (last visited Aug. 16, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, National Telecom, LLC, Call Signs WQVQ373, WQVQ383, WQVR365, WQVR387, WQWH231, WQWY324, WQXC502, WQZT449, WQZZ717, WRAD823, WRBN415, WRCE880, WRCE884, WRCE891, WRCE895, WRCM262, WRDG231, WRDN756, WRDN757, WRDS710, WRDS927, WRFC274, WRFC277, WRFC413, WRFY396, WRMG959, WRMG962, WRMG964, WRMG965, WRMG966, WRNE216, WRNE218, WRNE220, WROH463, WROH464, WROQ603, WROV901, WRPG239, WRPG247, WRYE390. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Jul. 31, 2024).

8. National Telecom failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided National Telecom with several notices regarding the requirement to file the Company's BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned National Telecom on June 13, 2023 and left a voicemail,[13] and OEA emailed the Company on March 23, 2023 and July 19, 2023 using the contact information that National Telecom registered in the BDC system.[14] The Commission's Enforcement Bureau also sent National Telecom a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, National Telecom is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, National Telecom failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, National Telecom has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find National Telecom apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like National Telecom to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to National Telecom (June 13, 2023), in File No. EB-IHD-24-00036687.

[14] Email from OEA, FCC, to National Telecom (Mar. 23, 2023, 12:43 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to National Telecom (Jul. 19, 2023, 3:04 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to National Telecom (Jul. 12, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that National Telecom apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against National Telecom of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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

(continued…)

15. Within the past 12 months, National Telecom failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find National Telecom apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which National Telecom is apparently liable.[32]

IV. CONCLUSION

17. We have determined that National Telecom apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, National Telecom is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, National Telecom, LLC, d/b/a Metro Wireless, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, National Telecom, LLC, d/b/a Metro Wireless, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for National Telecom, LLC, d/b/a Metro Wireless, to pay the proposed forfeiture, National Telecom, LLC, d/b/a Metro Wireless, shall notify the Enforcement Bureau at IHDTelecom@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, National Telecom, LLC, d/b/a Metro Wireless, shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment

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our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[30] The Company also failed to file a BDC report that was due March 1, 2023, however we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

selected:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
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- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

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

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

[37] *See* 47 CFR § 1.1914.

to sections 1.16 and 1.80(g)(3) of the Commission's rules.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 Tyler C. Hoffman, Chief Executive Officer, National Telecom, LLC, d/b/a Metro Wireless, 23840 Dequindre Road, Warren, MI 48091.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[38] *Id.* §§ 1.16, 1.80(g)(3).

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
SignalNet Inc.	)	File No.: EB-IHD-24-00036691
	)	NAL/Acct. No.: 202432080035
	)	FRN: 0027441765

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against SignalNet Inc. (SignalNet or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on SignalNet's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. SignalNet is a Texas corporation that provides facilities-based fixed BIAS to residences and businesses in Texas.[10] The Company holds six FCC licenses in the Microwave Industrial/Business Pool.[11]

8. SignalNet failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The Commission provided SignalNet with several notices regarding the requirement to file the Company's

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Texas Secretary of State, SignalNet Inc., File No. 0802984573 (formed Apr. 9, 2018), https://www.sos.state.tx.us/corp/sosda/index.shtml (last visited Aug. 16, 2024); https://signalnetbroadband.com/ (last visited Aug. 16, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, SignalNet, Call Signs WRCP582, WRCP583, WRCR494, WRCR496, WRQD290, WRQI574. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Jul. 31, 2024).

BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) emailed SignalNet on July 19, 2023 using the contact information that SignalNet registered in the BDC system.[13] The Commission's Enforcement Bureau also sent SignalNet a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[14] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, SignalNet is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, SignalNet failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, SignalNet has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[15] As a result, we find SignalNet apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like SignalNet to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[16] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[17]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Email from OEA, FCC, to SignalNet (Jul. 19, 2023, 3:09 PM) (notifying Company of the mandatory BDC filing requirement).

[14] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to SignalNet (Jul. 12, 2023) (warning Company of potential violations of a Commission Rule).

[15] *See supra* notes 13-14.

[16] 47 CFR §§ 1.7004(b), 1.7001(b).

[17] *Id.* § 1.7004(b).

12. For these reasons, we find that SignalNet apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[18] and March 1, 2024.[19]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[20] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against SignalNet of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[21] 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."[22] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[23] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[24]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[25] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[26] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[27] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[28]

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[18] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[19] *Id.* §§ 1.7004(b), 1.7001(b).

[20] 47 U.S.C. § 503(b)(1)(B).

[21] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[22] 47 U.S.C. § 503(b)(2)(E).

[23] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[24] *Id*.

[25] 47 CFR §1.7009(b).

[26] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[27] 47 CFR § 1.80(b).

[28] *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, 17098–99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

15. Within the past 12 months, SignalNet failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[29] Therefore, we find SignalNet apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[30] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which SignalNet is apparently liable.[31]

IV. CONCLUSION

17. We have determined that SignalNet apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, SignalNet is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, SignalNet Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, SignalNet Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for SignalNet Inc. to pay the proposed forfeiture, SignalNet Inc. shall notify the Enforcement Bureau at IHDTelecom@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, SignalNet Inc. shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[32]

- 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

[29] The Company also failed to file a BDC report that was due March 1, 2023, however we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[30] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[31] 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.

[32] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[33] or printed CORES form[34] 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).[35] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. 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.[36] 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.

22. 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.[37] 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

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

[34] 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.

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

[36] *See* 47 CFR § 1.1914.

[37] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[38] 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.[39]

24. **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 Stephen M. Lash, Chief Executive Officer, SignalNet Inc., 205 Windco Circle, #200B, Wylie, TX 75098.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[38] 47 U.S.C. § 503(b)(2)(E).

[39] *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).

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

In the Matter of	)	
	)	
Sonic Spectrum, Inc.	)	File No.: EB-IHD-24-00036695
	)	NAL/Acct. No.: 202432080036
	)	FRN: 0021290424

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 10, 2024 **Released: September 10, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $30,000 against Sonic Spectrum, Inc. (Sonic Spectrum or Company) for failing to submit data about its broadband internet access service (BIAS) to the Federal Communications Commission's (FCC's or Commission's) Broadband Data Collection (BDC) system in apparent violation of the FCC's rules. The Commission relies on data collected through the BDC system from facilities-based providers of mass-market fixed or mobile broadband internet service to create coverage maps and to assess the state of broadband availability in the United States, which in turn guides the efforts of the Commission and other policy makers' efforts to advance the deployment of BIAS in unserved and underserved communities. Covered BIAS providers that fail to comply with data reporting obligations undermine the accuracy and completeness of the BDC data, potentially harming consumers by depriving them of information about the availability, characteristics, and subscribership of BIAS in the U.S., as well as impairing the Commission's and other broadband funding agencies' ability to use this information to administer broadband policy effectively and identify communities in need of funding for broadband infrastructure investments.

2. We find the proposed penalty is appropriate based on Sonic Spectrum's failures to submit timely data about its BIAS service to the BDC system, and to underscore the importance of the obligation of broadband internet service providers to fulfill their reporting obligations to the Commission.

II. BACKGROUND

A. Legal Framework

3. The Broadband DATA Act requires the Commission to collect data biannually relating to the availability and quality of service with respect to fixed wired, terrestrial fixed wireless, satellite, and mobile broadband to create publicly available coverage maps, among other uses.[1] The National Broadband Map depicts the areas in which BIAS is and is not available, and it provides data the Commission is required to use in the awarding of funds for BIAS deployment.[2] As the Commission observed when it adopted rules implementing the data collection, in order to keep the data current,

[1] 47 U.S.C. § 642(a)(1)(A); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act).

[2] 47 U.S.C. § 642(c); 47 CFR § 1.7008(b).

"[a]ccurate and precise broadband maps are of enormous importance not only to the Commission, but also other federal policy makers, state policy makers, and consumers alike."[3]

4. Each facilities-based provider of mass-market fixed or mobile BIAS is subject to the reporting obligations.[4] Covered providers must submit broadband service availability data in the Commission's BDC system twice during every calendar year; the first filing is due on or before March 1 (reporting data as of December 31 of the prior year) and the second is due on or before September 1 (reporting data as of June 30 of the current year).[5]

5. In addition to the information required by the Broadband DATA Act, the Commission requires the submission of subscription data for broadband and voice services formerly submitted using FCC Form 477 (Form 477),[6] which is also submitted through the BDC system twice per year.[7] Form 477 data filings include broadband service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.[8]

6. Pursuant to sections 1.7001(b) and 1.7004 of the Commission's rules,[9] each entity that provided facilities-based fixed broadband service available to any location as of June 30, 2022, has a legal obligation to file data about its broadband service availability and subscription data in the BDC system as of June 30 and December 31 each year.

B. Factual Background

7. Sonic Spectrum is an Illinois corporation that provides facilities-based fixed BIAS to residences and businesses in Albuquerque and the East Mountain area of New Mexico.[10] The Company holds eight FCC licenses in the Microwave Industrial/Business Pool and two licenses in the Industrial/Business Pool.[11]

8. Sonic Spectrum failed to submit its availability data in the BDC system for three filing rounds that were due to the Commission on March 1, 2023, September 15, 2023, and March 1, 2024. The

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[3] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, para. 1 (2020). *See also* 47 U.S.C. § 642(c)(3).

[4] 47 CFR § 1.7004. *See also* 47 CFR § 1.7001(a)(6) (incorporating 47 CFR § 8.1(b) definition of broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints").

[5] *Id.* § 1.7004(b).

[6] *Id.* §§ 1.7001(b), 1.7002. *See also Broadband Providers No Longer Need to File Broadband Deployment Data Through FCC Form 477; Form Subscription Data Must be Filed in the BDC System*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 15032 (2022).

[7] *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957, 14961, para. 12 (2022) (*Data Collection Order*).

[8] *Data Collection Order*, 37 FCC Rcd at 14957-58, para. 2.

[9] 47 CFR §§ 1.7001(b), 1.7004.

[10] *See* Illinois Secretary of State, Sonic Spectrum, Inc., File No. 67689097 (eff. Dec. 14, 2010), https://apps.ilsos.gov/businessentitysearch/businessentitysearch (last visited Aug. 28, 2024); https://www.sonicpcs.com// (last visited Aug. 28, 2024).

[11] *See, e.g.*, FCC, Universal Licensing System, Microwave Industrial/Business Pool Licenses, Sonic Spectrum Internet Services, Ltd., Call Signs WQVU385, WQVZ272, WRCE719, WRCE840, WRCM216, WRCQ932, WRCQ934, WRCY927, WRDU829, WRFY506. The FCC Universal Licensing System (ULS) is a free to use and publicly available database, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp (last visited Aug. 15, 2024).

Commission provided Sonic Spectrum with several notices regarding the requirement to file the Company's BDC availability and subscription data. In addition to issuing a Public Notice announcing the filing deadline months in advance, the Enforcement Bureau issued an Enforcement Advisory on the topic.[12] The Commission's Office of Economics and Analytics (OEA) telephoned Sonic Spectrum on June 2, 2023, and left a voicemail,[13] and OEA emailed Sonic Spectrum on March 23, 2023 and July 19, 2023 using the contact information that Sonic Spectrum registered in the BDC system.[14] The Commission's Enforcement Bureau also sent Sonic Spectrum a letter warning that failure to file the required availability data in the BDC violates the Commission's rules.[15] The Company did not respond to any of the Commission's communications, nor did it file the required BDC data.

III. DISCUSSION

9. As a Commission licensee, Sonic Spectrum is responsible for compliance with the communications statutes and regulations applicable to its business. Despite offering facilities-based BIAS, which is specifically governed by the Commission's BDC data reporting rules, Sonic Spectrum failed to file its broadband service availability and subscription data on March 1, 2023, September 15, 2023, and March 1, 2024. Further, Sonic Spectrum has disregarded its data reporting obligations despite receiving multiple outreach efforts by Commission staff.[16] As a result, we find Sonic Spectrum apparently failed to fulfill its obligations as mandated by Commission rule sections 1.7001(b) and 1.7004.

10. Section 1.7004(b) of the Commission's rules requires facilities-based broadband providers like Sonic Spectrum to submit broadband service availability data in the BDC system twice per year on specified dates, and section 1.7001(b) requires such providers to submit broadband subscription and speed data contained in the Form 477 on the same schedule.[17] Specifically, the rules require covered providers to submit data on or before March 1 that reports data "as of" December 31 of the prior year, and on or before September 1 that reports data "as of" June 30 of the same year.[18]

11. The BDC data are essential for the Commission to publish complete, precise, granular data on the availability of fixed and mobile broadband nationwide. The FCC, other federal agencies, and state and local governments use this data to carefully target funding to bring broadband services to unserved and underserved locations. A broadband provider's failure to report timely and accurate broadband availability data significantly hinders the ability of federal, state, and local policymakers to target broadband deployment funds made available through various funding programs as effectively and accurately as possible. Furthermore, this failure harms the public by impairing the accuracy of the National Broadband Map.

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[12] *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 15161 (BDTF 2022); *All Facilities-Based Broadband Internet Access Service Providers Must Timely File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 11-10, 19-195, Enforcement Advisory No. 2022-03, 37 FCC Rcd 7341 (EB 2022).

[13] Notes of Call from Christopher Fettes, FCC OEA, to Carl Muehlenweg, Sonic Spectrum Inc. (Jun. 2, 2023), in File No. EB-IHD-24-00036695.

[14] Email from OEA, FCC, to Sonic Spectrum (Mar. 23, 2023, 12:42 PM) (notifying Company of the mandatory BDC filing requirement); Email from OEA, FCC, to Sonic Spectrum (Jul. 19, 2023, 3:04 PM) (notifying Company of its late and/or incomplete BDC filing).

[15] Letter from Patrick M. McGrath, FCC Enforcement Bureau, to Sonic Spectrum Inc. (Jul. 12, 2023) (warning Company of potential violations of a Commission Rule).

[16] *See supra* notes 13-15.

[17] 47 CFR §§ 1.7004(b), 1.7001(b).

[18] *Id.* § 1.7004(b).

12. For these reasons, we find that Sonic Spectrum apparently willfully and repeatedly violated sections 1.7001(b) and 1.7004 of the Commission's rules by failing to submit data on March 1, 2023, September 15, 2023,[19] and March 1, 2024.[20]

A. Proposed Forfeiture

13. This Notice of Apparent Liability for Forfeiture is issued pursuant to section 503(b) of the Act, which 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[.]"[21] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Sonic Spectrum of up to $24,496 for each violation, up to a statutory maximum of $183,718 for a single act or failure to act.[22] 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."[23] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[24] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[25]

14. Pursuant to section 1.7009(b) of the Commission's rules, a facilities-based provider of fixed or mobile BIAS may be subject to enforcement action for failures to file the required BDC data.[26] Section 1.80(b) of the Commission's rules sets a base forfeiture of $15,000 for each failure to file information required as part of the Digital Opportunity Data Collection, as the BDC was formerly known.[27] These base forfeiture penalties may be assessed for each violation or each day of a continuing violation.[28] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[29]

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[19] *See Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023*, WC Docket Nos. 19-195, 11-10, Public Notice, 38 FCC Rcd 6656 (BDTF 2023) (granting a limited waiver of section 1.7004(b) of the Commission's rules extending filing deadline from September 1, 2023 to September 15, 2023).

[20] *Id.* §§ 1.7004(b), 1.7001(b).

[21] 47 U.S.C. § 503(b)(1)(B).

[22] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). *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 January 15, 2024 as the effective date for the increases).

[23] 47 U.S.C. § 503(b)(2)(E).

[24] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[25] *Id*.

[26] 47 CFR §1.7009(b).

[27] 47 CFR § 1.80(b)(11), Table 1. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 and implementing BDC pursuant to Broadband DATA Act); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

[28] 47 CFR § 1.80(b).

[29] *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, 17098–99, para. 22 (1997) (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

(continued…)

15. Within the past 12 months, Sonic Spectrum failed to file two BDC reports that were due September 15, 2023 and March 1, 2024.[30] Therefore, we find Sonic Spectrum apparently violated sections 1.7004(b) and 1.7001(b) two times. Applying the $15,000 per-violation base forfeiture established in section 1.80(b) of the Commission's rules for each of the two failures to file BDC data, we propose a total base forfeiture of $30,000.

16. We find no reason to adjust the proposed forfeiture penalty upward or downward.[31] Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $30,000, for which Sonic Spectrum is apparently liable.[32]

IV. CONCLUSION

17. We have determined that Sonic Spectrum, Inc., apparently willfully and repeatedly violated sections 1.7004(b) and 1.7001(b) of the Commission's rules. As such, Sonic Spectrum, Inc., is apparently liable for a forfeiture of $30,000.

V. ORDERING CLAUSES

18. 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, Sonic Spectrum, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Thirty Thousand Dollars ($30,000) for willful and repeated violations of sections 1.7004(b) and 1.7001(b) of the Commission's rules, 47 CFR § 1.7004(b), 1.7001(b).

19. **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, Sonic 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 consistent with paragraph 22 below.

20. In order for Sonic Spectrum to pay the proposed forfeiture, Sonic Spectrum shall notify the Enforcement Bureau at IHDTelecom@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, Sonic Spectrum shall send electronic notification of payment to the Enforcement Bureau, Federal Communications Commission, at IHDTelecom@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:[33]

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our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[30] The Company also failed to file a BDC report that was due March 1, 2023, however we are unable to assess a proposed forfeiture for that violation based on the applicable statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B) (no forfeiture penalty shall be determined or imposed if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability).

[31] 47 CFR § 1.80(b)(11), Note 2 to para. (b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #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 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account

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

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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

Number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at IHDTelecom@fcc.gov.

23. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

24. **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 AJ Becker, Chief Executive Officer, Sonic Spectrum, Inc., 516 Laona Street, Durand, IL 61024.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

PUBLIC NOTICE

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

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

DA 24-909
Released: September 10, 2024

COMMISSION REGISTRATION SYSTEM (CORES) IS OPEN FOR PAYMENT OF FISCAL YEAR (FY) 2024 REGULATORY FEES

FY 2024 REGULATORY FEES ARE DUE SEPTEMBER 26, 2024

On September 6, 2024, the Federal Communications Commission (Commission or FCC) released *In the Matter of the Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*, Report and Order, FCC 24-93 (*FY 2024 Regulatory Fees Report and Order*). This document is available for viewing at http://www.fcc.gov/regfees. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 26, 2024.**[1] While FY 2024 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2024 regulatory fees due date.

The Commission has discontinued the use of the Fee Filer system and incorporated this payment system into the Commission Registration System (CORES). To use CORES, you need to be registered with the FCC at https://apps2.fcc.gov/fccUserReg/pages/login.htm. Once your FCC username is registered and verified, you can access CORES and select the option to associate your existing FRN to that username, if you have not already done so. To make a FY 2024 regulatory fee payment, login to the following website using your username and password: https://apps.fcc.gov/cores/userLogin.do.

Commission licensees and regulatees should consult the *FY 2024 Regulatory Fees Report and Order* for specific information concerning regulatory fee payment obligations, the regulatory fee process, and regulatory fee requirements for payment. The Commission also publishes industry-specific guidance under the heading *FY 2024 - Who Owes Fees and What Is My Fee*, which can be found on the Commission website at http://www.fcc.gov/regfees.

In the *FY 2024 Regulatory Fees Report and Order*, in recognition that some earth and space station fee payors may not be able to pay in lump sum the higher FY 2024 regulatory fees, the Commission directed the Office of Managing Director to continue two temporary relief measures for FY 2024, that is, the Office of Managing Director will continue assessing the lowest interest rate permitted by statute and forgo the customary down payment for earth and space station fee payors who are eligible for installment

[1] The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier's check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2024 regulatory fees.

payment relief, and will also extend the same terms to all other fee payors eligible to pay their FY 2024 regulatory fees in installments. Further information about the relief measures that the Commission is extending can be found in the Public Notice entitled *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2024 Regulatory Fees* on the Commission website at http://www.fcc.gov/regfees.

Section 9A(c) of the Communications Act requires the Commission to impose a late payment penalty of 25% of the unpaid amount to be assessed on the first day following the deadline for filing these fees, and thereafter, to assess interest on the unpaid fee and penalty until paid in full.[2] Except as described in the *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2024 Regulatory Fees* Public Notice, if a regulatee fails to pay its regulatory fees, the 25% penalty and/or accrued interest in full, the Commission will withhold action on and dismiss all pending applications and other requests for benefits filed by the regulatee, pursuant to section 1.1161 of the Commission's rules.[3] Failure to pay in full a regulatory fee, the 25% penalty and/or accrued interest on the fee and penalty may also result in revocation of a regulatee's license or authorization, pursuant to section 1.1164 of the Commission's rules.[4] In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, and the Commission will assess the 25% penalty and interest on the portion of the fee that is not paid in a timely manner.

REGULATORY FEES GUIDANCE

The following Fact Sheets, Public Notices, and website listed below will become available at http://www.fcc.gov/regfees to help licensees with their regulatory fee obligations:

Fact Sheet: *What You Owe—Cable Television Systems, IPTV, and DBS for FY 2024*

Fact Sheet: *What You Owe—Media Service Licensees for FY 2024*

Fact Sheet: *What You Owe—Commercial Wireless Services for FY 2024*

Fact Sheet: *What You Owe—International and Satellite Services for FY 2024*

Fact Sheet: *What You Owe—Interstate Telecommunications Service Providers (ITSP) for FY 2024*

Fact Sheet: *Regulatory Fee Exemptions for FY 2024, General Exemptions*

Public Notice: *Payment Methods and Procedures for Fiscal Year 2024 Regulatory Fees*

Public Notice: *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2024 Regulatory Fees*

Website: *FY 2024 Regulatory Fees Information Look-up for Media Services*, http://fccfees.com

ADDITIONAL INFORMATION

Licensees and regulatees should contact the Commission's Financial Operations help desk with inquiries regarding regulatory fees at (877) 480-3201, Option 6, or email inquiries to ARINQUIRIES@fcc.gov.

-FCC-

[2] 47 U.S.C. § 159A(c).

[3] 47 CFR § 1.1161.

[4] 47 CFR § 1.1164.

Federal Communications Commission
Washington, D.C. 20554

September 10, 2024

DA 24-910

SMALL ENTITY COMPLIANCE GUIDE

Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991
Second Report and Order

FCC 23-107
CG Docket Nos. 02-278, 21-402, 17-59
Released December 18, 2023

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

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

1-888-CALL-FCC (1-888-225-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

In *Targeting and Eliminating Unlawful Text Messages, Second Report and Order (Second Report and Order)*[1] the Federal Communications Commission (Commission) adopted three rules to combat unwanted and illegal calls and texts. The Commission required terminating mobile wireless providers to block text messages from a particular number following notification from the Commission, unless their investigation determines that the identified text messages are not illegal. To assist providers in complying with this rule, the Commission adopted a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that the Commission has ordered to be blocked has been permanently disconnected. The Commission also codified that the National Do-Not-Call (DNC) Registry's protections apply to text messages. In addition, the Commission closed the lead generator loophole by prohibiting lead generators, texters, and callers from using a single consumer consent to inundate consumers with unwanted robotexts and robocalls when consumers visit comparison shopping websites. The Commission made it unequivocally clear that texters and callers soliciting consumers' business must obtain a consumer's prior express written consent to robocall or robotext. This consent requirement applies to a single seller at a time, the consent must be in response to a clear and conspicuous disclosure to the consumer, and the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent.

Mandatory Blocking of Texts Following Notification from the Commission. In the *Second Report and Order*, the Commission adopted, with some changes, the proposal to require terminating providers to block all texts from a particular number when notified by the Enforcement Bureau of illegal texts from that number. Upon receipt of the notice, a provider must block all texts from the number and respond to the Enforcement Bureau indicating that the provider has received the notice and is initiating blocking. This blocking requirement is effective July 24, 2024, with a limited 12-month waiver as discussed in section II.

The National Do-Not-Call Registry. The Commission adopted the proposal to codify that the National DNC Registry's existing protections extend to text messages. Texters must have the consumer's prior express invitation or permission before sending a marketing text to a wireless number in the National DNC Registry. The Commission previously concluded that the national database should allow for the registration of wireless telephone numbers and that such action will further the objectives of the Telephone Consumer Protection Act (TCPA) and the DNC Act. This action is consistent with federal court opinions, will deter illegal texts, and will make DNC enforcement easier. This amendment was effective March 26, 2024.

Prior Express Written Consent Requirements – Closing the Lead Generator Loophole. Lead generated communications are a large percentage of unwanted robocalls and robotexts and often rely on flimsy or non-existent claims of consent. The TCPA requires callers to obtain the consent of the called party before making certain calls or texts using an "automatic telephone dialing system" (also known as an "autodialer") or with artificial or prerecorded voice. In some cases, this consent must be in writing. To satisfy this requirement, a consumer must consent to receive calls or texts from a single seller at a time, parties must provide clear and conspicuous disclosure to the consumer, and the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent. This action is also consistent with the FTC's Telemarketing Sales Rule (TSR), which requires one-to-one consent. This amendment is effective January 27, 2025, or 30 days after notice that the Office of Management and Budget has completed review of any information collection requirements, whichever is later.

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[1] *Targeting and Eliminating Unlawful Text Messages; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Report and Order and Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278 and 21-402, and Waiver Order in CG Docket No. 17-50, FCC 23-107 (Dec. 18, 2023) (*Second Report and Order*).

II. COMPLIANCE REQUIREMENTS

A. Mandatory Blocking of Texts Following Notification from the Commission (47 CFR § 64.1200(s) and 47 CFR § 0.111(a))

1. Mandatory Blocking. Upon receipt of the Notification of Illegal Texts from the Commission's Enforcement Bureau, a provider must:

   a) Block all texts from the identified number(s) within the timeframe specified in the Notification; and
   b) Respond to the Enforcement Bureau including a certification that the provider: i) received the notice, and ii) is initiating blocking.

If the provider learns that some or all of the numbers in the Notification have been reassigned, the provider must promptly notify the Enforcement Bureau and include any information it has to prove the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it must notify the Enforcement Bureau and cease blocking. Providers are not required to monitor whether any numbers subject to this blocking requirement have been reassigned, but must notify the Commission and cease blocking if the provider learns of a number reassignment.

2. Notification from the Commission. The Commission's Enforcement Bureau may notify terminating providers of illegal texts from a number or numbers (Notification of Illegal Texts). Notifications will specify a reasonable time frame for the notified provider to respond to the Enforcement Bureau and initiate blocking. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418. Notifications shall:

   a) Identify the number(s) used to originate the illegal texts and the date(s) the texts were sent or received;
   b) Provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful;
   c) Cite the statutory or regulatory provisions the illegal texts violate;
   d) Direct the provider receiving the notice that it must comply with mandatory blocking requirements in 47 CFR § 64.1200(s) of the Commission's rules; and
   e) Provide a point of contact to be used by a subscriber to a listed number to dispute blocking.

Limited Waiver. The *Second Report and Order* adopted a 12-month waiver on the effective date of 47 CFR § 64.1200(s) to allow mobile wireless providers to access the Reassigned Numbers Database (RND) to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. We strongly encourage providers to make an effort to determine whether a number has been reassigned in order to avoid blocking lawful texts from a different source.

B. National Do-Not-Call Registry Requirements (47 CFR § 64.1200(e))

No person or entity shall send a solicitation or marketing text to a consumer with a wireless number in the National DNC Registry without the consumer's prior express invitation or permission before sending, as detailed in section II.C below.

C. Prior Express Written Consent Requirements (47 CFR § 64.1200(f)(9))

In the *Second Report and Order*, Commission revised the "prior express written consent" definition to make it clear that the consent must be from the called or texted party to each seller/caller, on

a one-to-one basis, and that the calls and texts must be logically and topically associated with the website or other interaction when consent was obtained.

1. Prior express written consent requires:

   a) A written agreement,
   b) Signed by the person called or texted, and
   c) The agreement clearly and conspicuously authorizes no more than one identified seller to deliver, or cause to be delivered to the person called or texted, advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice.
   d) The agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

2. Calls and texts must be logically and topically associated with the interaction that prompted the consent.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Second Report and Order* created new recordkeeping or reporting requirements for callers and texters as detailed above in section II. Upon receipt of a Notification of Illegal Texts, a provider must block all texts from the number(s) indicated in the notice and respond to the Enforcement Bureau confirming that the provider has received the notice and is initiating blocking. Callers and texters must obtain one-to-one prior express written consent from the consumer. Such calling and texting parties that have not previously obtained one-to-one consent from the consumer will have to revise their websites and other platforms where consent is obtained, if prior express written consent is required under the TCPA.

IV. IMPLEMENTATION DATE

The amendment to the Do-Not-Call rule, 47 CFR § 64.1200(e), was effective March 26, 2024. The amendment to the mandatory blocking rule, 47 CFR § 64.1200(s), was effective July 24, 2024, with limited 12-moth waiver. The prior express written consent requirements in 47 CFR § 64.1200(f)(9), are effective January 27, 2025, or 30 days after notice that the Office of Management and Budget has completed review of any information collection requirements, whichever is later.

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at: https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf.

A copy of the Federal Register Summary of the *Second Report and Order* is available at: https://www.federalregister.gov/documents/2024/01/26/2023-28832/targeting-and-eliminating-unlawful-text-messages-implementation-of-the-telephone-consumer-protection.

Notifications of Illegal Texts in EB Docket No. 23-418 are available at: https://www.fcc.gov/ecfs/search/search-filings.

Other information on combatting robocalls and texts can be found on the Commission's website at: https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts.

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 24-911
Released: September 10, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMMENT DATES FOR TCPA AI NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

CG Docket No. 23-362

Comment Date: October 10, 2024
Reply Comment Date: October 25, 2024

On August 7, 2024, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking and Notice of Inquiry (*TCPA AI NPRM & NOI*) that proposed new rules to protect consumers from the abuse of Artificial Intelligence (AI) in robocalls and robotexts 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.[1] In addition, the Commission sought comment and information on developing technologies that can alert consumers to unwanted or illegal calls and texts, including AI-generated calls.[2] On September 10, 2024, a summary of the *TCPA AI NPRM & NOI* was published in the Federal Register.[3]

The *TCPA AI NPRM & NOI* sets deadlines for filing comments and reply comments at 30 days and 45 days after publication in the Federal Register, respectively.[4] Accordingly, comments must be filed by **October 10, 2024**, and replies must be filed by **October 25, 2024**.

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

For further information, contact Richard D. Smith, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at Richard.Smith@fcc.gov or (717) 338-2797 or Noah Cherry, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at Noah.Cherry@fcc.gov or (202) 418-7835.

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[1] *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, FCC 24-84 (rel. Aug. 8, 2024) (*TCPA AI NPRM & NOI*), https://docs.fcc.gov/public/attachments/FCC-24-84A1.pdf.

[2] *Id.* at paras. 35-45.

[3] Federal Communications Commission, Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts, Proposed Rule, 89 Fed. Reg. 73321 (Sept. 10, 2024).

[4] *See TCPA AI NPRM* at para. 56.

PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20002

News media information 202-418-0500
Internet: http://www.fcc.gov

DA 24-912

REPORT NO: 0514 **SPECIAL RELIEF AND SHOW CAUSE PETITIONS** **September 17, 2024**

Portions of this Public Notice have been produced by the Media Bureau's computer-based Data Management systems.

This Public Notice is intended to list only special relief requests, petitions for order to show cause and related petitions for reconsideration or applications for review. CSR (cable special relief) petitions and CSC (cable show cause) petitions refer to cable-related matters pursuant to Part 76. The newly-designated BSR (broadcast special relief) petitions refer to certain non-application-related broadcast matters pursuant to Part 73.

Parties seeking special relief pursuant to Part 76 are advised that such requests must be initiated through the special relief provisions of Section 76.7 of the Rules. Many of these filings are subject to the pleading cycle rules set forth in Section 76.7, while others have their own pleading cycle relative to the particular rule involved. For BSR petitions filed pursuant to Part 73, the pleading cycle will be the same as that mandated by Section 76.7 unless stated otherwise.

Petitions for reconsideration and applications for review are listed for informational purposes only. The applicable pleading cycles for these types of petitions are found in Sections 1.106 and 1.115 of the Commission's rules, respectively.

Please Note that files containing these petitions can no longer be reviewed in the Commissions Reference Information Center, CY-Level, 445 12th Street, SW Washington, DC 20554. Anyone may search for petitions electronically filed via the Commission's Electronic Comment Filing System (ECFS) by using MB Docket No. 12-1 in the proceeding number field. Once the Media Bureau has issued a Special Relief and Show Cause Petition Public Notice, interested parties can find the petition at issue by using the newly assigned docket number or the CSR or CSC number. Enter the CSR or CSC number into the Bureau Identification Number field in ECFS.

The letter code following a CSR Number refers to the particular subject of the petition. Those currently in use are: A – ADI/DMA; M – must carry; E – effective competition; C – retransmission consent; P – program access; R – rate regulation; F – rate freeze; L – commercial leased access; Z – technical; S – significantly viewed; N – nonduplication/syndicated exclusivity/sports deletion; D – small system definition; O – OTARD; and X – cross ownership. If no letter appears after the CSR number, the petition is considered to be in the miscellaneous category. CSC and BSR petitions do not have letter code designations. It is requested that all responses or statements refer to the CSR file number or docket number assigned to the petition.

For further information about this Public Notice contact the Media Bureau at (202) 418-7200.

REPORT NO: 0514 **SPECIAL RELIEF AND SHOW CAUSE PETITIONS** **September 17, 2024**

Docket No.	CSR Number	Petitioner	Respondent	Special Relief Request Communities
24-280	CSR-9019-C	DIRECTV	The Walt Disney Company	Fresno, CA Los Angeles, CA San Francisco-Oakland -San Jose, CA Chicago, IL New York, NY Durham-Raleigh-Fayetteville, NC Philadelphia, PA Houston, TX

-FCC-

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

In the Matter of	)	NAL/Acct. No. MB-202441410016
MHR License LLC and	)	FRN: 0012576385
MRR License LLC	)	Application File Nos. 0000193992 et al., 0000194174
Applications for Consent to Transfer of Control	)	FRN: 0010038610 Application File No. 0000193997 et al.
from	)	
Aardvarks Also LLC et al. (Transferor)	)	
to	)	
Aardvarks Also Inc. et al. (Transferee)	)	

ORDER

Adopted: September 12, 2024 **Released: September 12, 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) of the Federal Communications Commission and MHR License LLC and MRR License LLC (Licensees) licensees of the broadcast radio stations (Stations) listed in the Appendix to the Consent Decree. The Consent Decree resolves issues arising from the Bureau's review of the captioned applications (Voluntary Transfer Applications or Applications).[1]

2. In the course of processing the Voluntary Transfer Applications, the Bureau staff determined that changes in Licensees' ownership resulted in an unauthorized transfer of control. The Consent Decree concludes the Bureau's investigation of the Licensees' compliance with section 310(d) of the Communications Act of 1934, as amended (the Act),[2] and section 73.3540 of the Commission's rules (Rules).[3]

3. Pursuant to the terms of the Consent Decree, Licensees stipulate that they violated section 310(d) of the Act and section 73.3540 of the Rules. The Consent Decree requires, among other things, that the Licensees make a fifteen thousand dollar ($15,000) civil penalty payment to the United States Treasury and implement a compliance plan to ensure future compliance with section 310(d) of the Act

[1] *See* Application File Nos. 0000193992 et al.; and 0000193997 et al. (filed June 27, 2022), amended April 23, 2024; Application File No. 0000194174 (filed June 29, 2022), amended April 23, 2024; *see also Broadcast Applications*, Public Notice, Report No. PN-1-220629-01 (June 29, 2022); *Broadcast Applications*, Public Notice, Report No. PN-1-220705-01 (July 5, 2022).

[2] 47 U.S.C. § 310(d).

[3] 47 CFR § 73.3540.

and section 73.3540 of the Rules. A copy of the Consent Decree is attached hereto and incorporated by reference.

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

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

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

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Max Media LLC, and to its counsel, Brad Deutsch, Esq., Foster Garvey P.C., 3000 K St., NW, Suite 420, Washington, DC 20007.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[6] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the Stations' online public inspection file until grant of the next license renewal application.[7]

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] *Id.* § 73.3526(e)(10).

[7] The Appendix to the Consent Decree contains a list of the Stations.

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

In the Matter of	)	NAL/Acct. No. MB-202441410016
	)	
	)	
MHR License LLC and	)	FRN: 0012576385
	)	Application File Nos. 0000193992 et al.,
MRR License LLC	)	0000194174
	)	
	)	FRN: 0010038610
Applications for Consent to Transfer of Control	)	Application File No. 0000193997 et al.
	)	
from	)	
	)	
Aardvarks Also LLC et al. (Transferor)	)	
	)	
to	)	
	)	
Aardvarks Also Inc. et al. (Transferee)	)	
	)	
	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission, MHR License LLC, and MRR License LLC, for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

II. DEFINITIONS

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

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

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

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

(d) "Civil Penalty" means the payment Licensees have agreed to pay to the United States Treasury;

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

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

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

(h) "Licensees" means MHR License LLC, MRR License LLC, and their affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(i) "Parties" means the Licensees and the Bureau;

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

(k) "Violations" mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act;

(l) "Voluntary Transfer Applications" means, collectively, the FCC Form 2100, Schedule 315 applications for consent to the voluntary transfer of control seeking consent to the transfer of control from Aardvarks Also LLC et al. to Aardvarks Also Inc. et al., Application File Nos. 0000193992 et al., 0000194174, and 0000193997 et al.;

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

III. BACKGROUND

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

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[8]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[9] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or *affirmative*, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[10]

4. Since last approved on a long-form application in 2009, a number of changes have occurred in the corporate ownership structure of the Licensees, including both *pro forma* and *non pro forma* changes. The Licensees filed the Applications to reflect collectively the changes in ownership since 2009.

5. On December 28, 2020, the Licensees initially filed short-form applications seeking Commission consent to a voluntary *pro forma* transfer of control.[11] In the course of processing those applications, Bureau staff identified changes in ownership and corporate structure that, collectively, constituted a *non pro forma* transfer of control. The changes include the abandonment of interests by

[8] 47 U.S.C. § 310(d).

[9] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id*. § 73.3540(a). The rule states further that an "[a]pplication for consent to the transfer of control of a corporation holding a construction permit or license must be filed on [FCC Form 2100, Schedule 315]" where the transaction involves a substantial (or non pro forma) change in ownership or control, or on FCC Form 2100, Schedule 316 where the transaction is pro forma (i.e., does not involve a substantial change in ownership or control). *Id*. § 73.3540(a). The Commission has generally considered a change in ownership or control to be "substantial" if (a) 50 percent or more of the voting stock is being transferred or (b) the transaction results in 50 percent or more of the outstanding voting stock being held by persons whose qualifications the Commission has not "passed upon" on a long-form application. *Barnes Enterprises*, *Inc*., 55 FCC 2d 721 (1975); *Clay Broadcasters*, *Inc*., 21 RR 2d 442 (1971).

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

[11] *See* Application File Nos. 0000130115 et al., 0000130121, and 0000130143 et al. (filed Dec. 28, 2020); *see also Broadcast Applications,* Public Notice, Report No. PN-1-201230-01 (Dec. 30, 2020).

certain outside investors, the redistribution of those interests to previously attributable shareholders, and the conversion of certain companies in the ownership structure from limited liability companies to corporations. These events occurred for a variety of business and tax reasons. As a result of the various changes, a *non pro forma* transfer of control of the Licensees occurred without prior Commission consent as required by section 310(d) of the Act and the Voluntary Transfer of Control Rule.

6. Following communication with Commission staff, the Licensees requested that the short-form applications be withdrawn,[12] and instead filed the above-captioned Voluntary Transfer Applications on June 27 and June 29, 2022, seeking approval for the cumulative ownership changes.[13] By the Voluntary Transfer Applications, the Licensees seek to come into compliance with the Commission's rules and to reflect changes in ownership that have occurred since 2009.

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

IV. TERMS OF AGREEMENT

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

9. **Jurisdiction**. Licensees agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

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

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

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[12] The earlier filed short-form applications (Application File Nos. 0000130115 et al., 0000130121, and 0000130143, et al.) were dismissed on July 1, 2022, shortly after the filing of the long-form applications. *See Broadcast Actions*, Public Notice, Report No. PN-2-220706-01 (MB July 6, 2022).

[13] *See* Application File Nos. 0000193992 et al.; and 0000193997 et al. (filed June 27, 2022), amended April 23, 2024; Application File No. 0000194174 (filed June 29, 2022), amended April 23, 2024; *see also Broadcast Applications*, Public Notice, Report No. PN-1-220629-01 (June 29, 2022); *Broadcast Applications*, Public Notice, Report No. PN-1-220705-01 (July 5, 2022). At the time these applications were initially filed in June 2022, the parent company of MHR License LLC and MRR License LLC, Max Media LLC (Max Media) was also the indirect controlling owner of Max Radio of Denver LLC, which was the licensee of several radio stations. Accordingly, Max Media filed a transfer of control application for that license company as well, Application File Nos. 0000194019 et al. In early 2024, however, Max Radio of Denver LLC sold all of its radio stations and is no longer an FCC licensee. *See* Application File No. 0000233567 (granted Feb. 14, 2024; consummated April 1, 2024). Accordingly, Max Media has requested withdrawal of the pending transfer of control application for Max Media of Denver LLC, Application File Nos. 0000194019 et al.

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

13. **Admission of Liability**. Licensees stipulate that their actions described in Paragraphs 4 and 5 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

14. **Civil Penalty**. Licensees agree to pay the Civil Penalty to the United States Treasury in the amount of fifteen thousand dollars ($15,000), within thirty (30) calendar days after the Effective Date. Licensees acknowledge and agree that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[14]

15. **Payment**. Licensees will also send electronic notification of payment to Brendan Holland at Brendan.Holland@fcc.gov and to Olivia Hill at Olivia.Hill@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[15] or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[16]

- 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).[17] 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

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

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

[16] 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.

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

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.

16. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, Licensees shall designate David Wilhelm to serve as the Compliance Officer who will discharge the duties set forth below, supervise Licensees' compliance with the Act and the Rules, and serve as the point of contact on behalf of the Licensees for all FCC-related compliance matters.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensees agree that they shall, within sixty (60) calendar days after the Effective Date, develop, implement, and maintain for a period of three (3) years a Compliance Plan designed to ensure future compliance with the Commission's transfer of control rules. The Compliance Plan shall apply to all radio stations owned by the Licensees. The Compliance Plan shall contain, at a minimum, the following elements:

a. **Compliance Manual**. Licensees will issue a Compliance Manual that is distributed to employees and others who perform duties for the Licensees related to assignment and transfer of control applications and ownership reporting. Licensees 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 include: (1) an overview of the Commission's requirements with respect to applications for assignment or transfer of control of FCC licenses, including the need for prior approval for license assignments and transfers of control as set forth in the Rules; and (2) a description of the regulatory requirements applicable to the accurate reporting of information in assignment and transfer of control applications as set forth in the Rules. Licensees shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.

b. **Compliance Training Program**. Licensees shall administer a Compliance Training Program for employees and others who perform duties for the Licensees related to assignment and transfer of control applications and ownership reporting. This Compliance Training Program shall be completed for all such employees within seventy-five (75) calendar days of the Effective Date. This Compliance Training Program shall also be presented to new employees who are engaged in such activities, within the first thirty (30) calendar days of employment. This Compliance Training Program shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual.

c. **Compliance Reports**. Licensees shall submit a Compliance Report to the Commission ninety (90) days after the Effective Date and annually thereafter on the anniversary of the Effective Date for a period of three (3) years. Each Compliance Report will include a certification by the Compliance Officer, as an agent of and on behalf of Licensees, attesting to personal knowledge that: (1) Licensees have established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 310(d) of the Act and the Voluntary Transfer of Control Rule, together with an accompanying statement explaining the basis for the certification; (2) Licensees have been utilizing those procedures since the previous Compliance Report

was submitted; and (3) Licensees are not aware of any instances of non-compliance with the Consent Decree or those specified sections of the Act and Rules. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Act or Rules, and (ii) the steps that Licensees have taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Brendan Holland, Audio Division, FCC Media Bureau, at Brendan.Holland@fcc.gov.

18. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensees possess the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Applications after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 14 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Applications.

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

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

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

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

23. **Successors and Assigns**. Licensees agree that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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

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

[18] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

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

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

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: **September 12, 2024**

MHR LICENSE LLC

By: _____
David Wilhelm, Vice President and Assistant Secretary

Date: _____

MRR LICENSE LLC

By: _____
David Wilhelm, Vice President and Secretary of Mississippi River Radio LLC, its sole member

Date: _____

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MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

MHR LICENSE LLC

By: _____
David Wilhelm, Vice President and Assistant Secretary

Date: 9/11/2024

MRR LICENSE LLC

By: _____
David Wilhelm, Vice President and Secretary of Mississippi River Radio LLC, its sole member

Date: 9/11/2024

APPENDIX: STATIONS

I. MHR License LLC

Call Sign	Service	Facility ID	City, State	File Number
WGH	AM	72103	Newport News, VA	0000193992
WGH-FM	FM	72102	Newport News, VA	0000193993
WVSP-FM	FM	19836	Yorktown, VA	0000193994
W265EF	FX	202208	Newport News, VA	0000193995
WVHT	FM	71287	Norfolk, VA	0000193996
WVBW	FM	64000	Suffolk, VA	0000194174

II. MRR License LLC

Call Sign	Service	Facility ID	City, State	File Number
KCGQ-FM	FM	64621	Gordonville, MO	0000193997
WOOZ-FM	FM	74581	Harrisburg, IL	0000193998
K227BK	FX	152459	Poplar Bluff, MO	0000193999
W258DP	FX	202334	Herrin, IL	0000194000
KJEZ	FM	365	Poplar Bluff, MO	0000194001
K269GZ	FX	202204	Sikeston, MO	0000194002
KEZS-FM	FM	74580	Cape Girardeau, MO	0000194003
W300DY	FX	202207	Carbondale, IL	0000194004
WXLT	FM	6647	Christopher, IL	0000194005
WCIL	AM	65950	Carbondale, IL	0000194006
KKLR-FM	FM	6016	Poplar Bluff, MO	0000194007
KLSC	FM	4154	Malden, MO	0000194008
K228FX	FX	202205	Cape Girardeau, MO	0000194009
KGKS	FM	78626	Scott City, MO	0000194010
WJPF	AM	19058	Herrin, IL	0000194011
KGIR	AM	64622	Cape Girardeau, MO	0000194012

KSIM	AM	35605	Sikeston, MO	0000194013
KMAL	AM	4153	Malden, MO	0000194014
WUEZ	FM	39520	Carterville, IL	0000194015
WCIL-FM	FM	65949	Carbondale, IL	0000194016
KWOC	AM	6015	Poplar Bluff, MO	0000194017
KZIM	AM	74582	Cape Girardeau, MO	0000194018

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-914
Released: September 10, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU REMINDS PROVIDERS OF THE OCTOBER 10, 2024 COMPLIANCE DATE FOR BROADBAND LABELS

CG Docket No. 22-2

On November 14, 2022, the Commission adopted the *Broadband Label Order* as part of the implementation of the Infrastructure Investment and Jobs Act.[1] In that rulemaking, the Commission required broadband Internet access service providers (providers) to display, at the point of sale, a broadband consumer label with information about their service offerings, including pricing, introductory rates, data allowances, and performance metrics. The Commission also defined label formatting and display location requirements.

On September 19, 2023, the Office of Management and Budget (OMB) approved the information collection requirements contained in the *Broadband Label Order*.[2] Notice of the OMB approval was published in the Federal Register on October 10, 2023.[3] Accordingly, compliance with the label display requirements in 47 CFR §§ 8.1(a)(1), (a)(2), and (a)(4) through (a)(6), for providers with 100,000 or fewer subscriber lines is required as of October 10, 2024;[4] compliance with the requirement in 47 CFR § 8.1(a)(2) to make labels accessible in online account portals is required for all providers as of October 10, 2024; and compliance with the requirement in 47 CFR § 8.1(a)(3) to make information in the label available in a machine-readable format is required for all providers as of October 10, 2024.[5]

For further information, contact Zac Champ, Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-1495 or zac.champ@fcc.gov or Mika Savir, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-0384 or mika.savir@fcc.gov.

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[1] *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686 (2022) (*Broadband Label Order*), Order on Reconsideration, 38 FCC Rcd 8238 (2023); *see also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021); https://www.fcc.gov/broadbandlabels.

[2] Notice of Office of Management and Budget Action, OMB Control No. 3060-1316 (approved Sept. 19, 2023), *available at* https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202307-3060-030.

[3] *Empowering Broadband Consumers Through Transparency*, 88 FR 69883 (Oct. 10, 2023).

[4] Other providers were required to display labels in compliance with these rules by April 10, 2024. *Consumer and Governmental Affairs Bureau Announces Compliance Dates of April 10, 2024 and October 10, 2024 for Broadband Label Rules*, Public Notice, 38 FCC Rcd 9341 (CGB 2023) (announcing compliance dates for the broadband label requirements).

[5] *Empowering Broadband Consumers Through Transparency*, 88 FR 69883 (Oct. 10, 2023).

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: September 10, 2024 **Released: September 10, 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 Francine, including DPAs East 3 and East 22-24 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Tropical Storm Francine is expected to strengthen into a hurricane Tuesday, September 10, 2024, and make landfall Wednesday, September 11, 2024, over Louisiana.[3] A storm surge warning is in effect for portions of the upper Texas, Louisiana, and Mississippi coastlines. Francine is expected to bring heavy rainfall and the risk of flash flooding for much of Louisiana, Mississippi, and the Texas Coast through Thursday, September 12, 2024.[4] For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

[1] *See* Federated Wireless Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed September 9, 2024) (Waiver Request), https://www.fcc.gov/ecfs/document/10909039037191/1; *see also* State of Louisiana, Office of the Governor, *Governor Landry Declares State of Emergency* (Sep. 9, 2024), https://gov.louisiana.gov/news/4630.

[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 Francine Advisory 7, 10:00 AM CDT Tue Sep 10, 2024, https://www.nhc.noaa.gov/graphics_at1.shtml?key_messages.

[4] National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Tropical Storm Francine Advisory 7, 10:00 AM CDT Tue Sep 10, 2024, https://www.nhc.noaa.gov/graphics_at1.shtml?key_messages.

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 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 Tropical Storm Francine. Federated seeks a waiver of these requirements in the interest of providing uninterrupted service to approximately 1,500 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands of customers in areas that may be impacted by Tropical Storm Francine.[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 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

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[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*).

[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.*

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 1,500 CBSDs, potentially disconnecting thousands 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, "[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 previous severe weather events[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 September 24, 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 Francine, 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.

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[14] *Id*.

[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); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-814 (rel. Aug. 14, 2024).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the request filed by Federated Wireless for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

PUBLIC NOTICE

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

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

DA 24-916

Released: September 10, 2024

PROCEDURES FOR FILING REQUESTS FOR WAIVER, REDUCTION, DEFERRAL AND INSTALLMENT PAYMENT OF FISCAL YEAR 2024 REGULATORY FEES

On September 6, 2024, the Federal Communications Commission (Commission or FCC) released *Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Review of the Commission's Assessment and Collection of Regulatory Fees*, *Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*, Second Report and Order, FCC 24-93.[1] This document is available for viewing at http://www.fcc.gov/regfees. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 26, 2024.**[2] While FY 2024 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2024 regulatory fee due date.

Any regulatory fee that is not paid in full by September 26, 2024, and for which a request to waive, reduce, or defer payment of the fee or a request to pay the fee in installments[3] has not been filed by September 26, 2024, will be assessed a 25% late payment penalty. The unpaid regulatory fee and the 25% late payment penalty will accrue interest until paid in full.[4] Further, the Commission may pursue all available remedies to collect unpaid regulatory fee debt, including placing delinquent debtors on "red light," dismissing delinquent debtors' pending applications and request for benefits[5] and referring the delinquent debt to the United States Treasury for further collection.[6]

The Commission will not extend to FY 2024 the temporary COVID-19-based relief measures it adopted for FY 2020-2023. Instead, normal operation of sections 1.1166 and 1.1910 of the Commission's rules

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Review of the Commission's Assessment and Collection of Regulatory Fees*, *Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*, Second Report and Order, FCC 24-93 (OMD Sept. 6, 2024) *(FY 2024 Report and Order).*

[2] The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier's check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2023 regulatory fees.

[3] 47 CFR §§ 1.1166 and 1.1914.

[4] 47 U.S.C. §159A(c); 31 USC § 3717; 47 CFR §§ 1.1164 and 1.1940.

[5] Under the Commission's "red light" rule, the Commission will not act on any application or request for benefit filed by a party that owes delinquent debt to the Commission. The delinquent debtor must pay its debt in full or make payment arrangements satisfactory to the Commission. Failure to do so will result in dismissal of the debtor's filing. 47 CFR §§ 1.1164 and 1.1910.

[6] 31 U.S.C. § 3701, *et seq*.; 47 CFR §1.1901, *et. seq*.

will resume immediately.[7] Specifically, with respect to operation of the "red light" rule, the Commission will not act on and will dismiss a request for waiver, reduction, deferral, and/or installment payment relief filed by a fee payor if the fee payor is on red light, in accordance with the requirements of sections 1.1164 and 1.1910.[8] In addition, a fee payor seeking waiver, reduction, and/or deferral of its regulatory fee under section 1.1166 of the Commission's rules must submit with its request such documentation as is necessary to demonstrate good cause for the relief sought and that waiver, reduction, and/or deferral of the fee promotes the public interest.[9] Documents submitted after a request is filed will not be considered and failure to submit any supporting documents with a request will result in dismissal and/or denial of the request.[10]

Installment payment of FY 2024 regulatory fee debt.

The Commission recognizes that FY 2024 regulatory fees for earth and space stations have increased significantly from their FY 2023 fees, and some earth and space station fee payors may have difficulty paying their FY 2024 regulatory fee in full before the September 26, 2024 deadline. The Office of Managing Director will work with earth or space station fee payors, or any other payors, that are unable to pay their FY 2024 regulatory fee in full by the deadline to the greatest extent possible to utilize installment plans for payment of those fees. As further assistance to fee payors seeking an installment plan, the Office of Managing Director will fix the interest rate on installment payment of FY 2024 regulatory fee debt at the lowest interest rate permitted by statute[11] and will not require a down payment. .

All fee payors seeking to pay their FY 2024 regulatory fees in installments will be permitted to make a partial payment of their FY 2024 regulatory fee, and are encouraged, to pay as much of their FY 2024 regulatory fee as possible by September 26, 2024.[12]

All fee payors that intend to request installment payment of all or the unpaid balance of their FY 2024 regulatory fees must submit their installment payment requests by September 26, 2024 to avoid assessment of a 25% late payment penalty, interest, and costs on their FY 2024 regulatory fee debt. Fee payors may request an installment payment plan electronically, by sending their requests to regfeerelief@fcc.gov. A request may be combined in a single filing with a waiver and deferral request

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[7] The Commission codified certain of these temporary measures in sections 1.1166 and 1.1914 of its regulations. *Review of Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, MD Docket Nos. 23-159 and 23-301, Report and Order and Notice of Proposed Rulemaking, 38 FCC Rcd. 8071, 8120 - 8182 (2023) (*FY 2023 Regulatory Fees Report and Order*). Revised section 1.1166 is now effective. Revised section 1.1914 will not become effective until the Office of Management and Budget approves the revisions under the Paperwork Reduction Act; therefore, the Commission continues the revisions under section 1.1914 as temporary measures until the revised rule become effective.

[8] 47 CFR §§ 1.1164, 1.1910.

[9] 47 CFR § 1.1166.

[10] *Id.*

[11] Section 3717 of the Debt Collection Improvement Act of 1996 requires agencies to charge interest at a rate that is no lower than the Current Value of Funds rate. 31 U.S.C. § 3717(a)(1), 31 CFR § 901.9(b)(2), 47 CFR § 1.1914(b)(2). The Current Value of Funds rate is established by the United States Department of Treasury and until December 31, 2024, is four percent (4%) per annum, https://www.fiscal.treasury.gov/reports-statements/cvfr/.

[12] For instructions on how to make partial and full payment of FY 2024 regulatory fees, please review the Payment Methods and Procedures Public Notice for Fiscal Year 2024 Regulatory Fees, https://www.fcc.gov/licensing-databases/fees/regulatory-fees.

made on financial hardship grounds.[13] Only those fee payors who demonstrate that they cannot pay their FY 2024 regulatory fees in full by September 26, 2024 will be granted installment payment relief.[14]

Waiver, reduction and deferral on financial hardship grounds.

The Commission's standard for granting a waiver request under section 1.1166 of its rules has not changed. The Commission may waive, reduce or defer payment of a regulatory fee in a specific instance if a regulatee demonstrates good cause for the relief sought and that waiver, reduction, or deferral of the fee promotes the public interest. Fee relief may be granted, but only to those regulatees "unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping the cost of the Commissions regulatory services."[15]

A request for waiver or reduction of a FY 2024 regulatory fee[16] based on financial hardship must be filed on or before September 26, 2024 and accompanied by either (i) full payment of the FY 2024 regulatory fee or (ii) a request to defer payment with all financial documents the fee payor determines are sufficient to demonstrate financial hardship;[17] no additional documents will be accepted for consideration after a party's waiver request has been filed.[18] A party seeking relief under section 1.1166 from payment of its FY 2024 regulatory fees based on financial hardship may file a single request for all forms of relief sought.[19] Parties are directed to file their requests electronically by emailing their requests, together with all supporting financial documents, to the following email address: regfeerelief@fcc.gov.[20]

In order to prove financial hardship sufficient to justify a waiver, a regulatee must show that it lacks sufficient funds to pay its FY 2024 regulatory fee in full while maintaining service to the public.[21] Among the documents that a business entity fee payor may wish to include to prove financial hardship sufficient to justify a waiver are: tax returns, a balance sheet and profit and lost statement (audited if possible), cashflow projections for the next twelve months, a list of officers and highest paid individual employees with each person's compensation. For individual fee payors, such documents might include wage statements, documents disclosing non-wage income, such as rental income; real estate valuations and mortgage documents; bank, credit card and loan statements; account numbers and balances for all cash accounts and investments; monthly income and expense summaries; and tax returns. A request filed by a party on "red light" under section 1.1910 of the Commission's rules will be dismissed.[22]

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[13] 47 CFR §§ 1.1166 and 1.1914.

[14] 47 CFR § 1.1914.

[15] *Assessment and Collection of Regulato9ry Fees For FY 2019,* Report and Order and Further Notice of Proposed Rulemaking, MD Docket 19-105, 34 FCC Rcd 8189, 8207, para. 50 (2019) (*FY 2019 Report and Order*).

[16] Requests to waive, reduce and/or defer payment of regulatory fees may include requests to waive, reduce and/or defer payment of the 25% penalty and accrued interest. 47 U.S.C. § 159A(d); 47 CFR § 1.1166.

[17] 47 CFR § 1.1166. Waiver requests filed after the September 26, 2024 deadline will be dismissed unless the fee payor has paid its FY 2024 regulatory fee (and if payment is made after September 26, 2024, the 25% late payment penalty and all accrued interest and costs), and is not on red light for any other unpaid delinquent debt.

[18] *FY 2024 Report and Order*, paras. 54-63.

[19] 47 CFR § 1.1166.

[20] *Id.*

[21] *FY 2019 Report and Order,* 34 FCC Rcd 8189, 8207, para. 50.

[22] 47 CFR §§ 1.1164, 1.1910.

Waiver or reduction of fees on other grounds.

Requests for waiver or reduction of FY 2024 regulatory fees on any grounds other than financial hardship may be combined in a single filing and must be filed by September 26, 2024 or accompanied by full payment of the FY 2024 regulatory fee. Parties are directed to file their requests electronically by emailing their requests, together with all supporting documents, to the following email address: regfeerelief@fcc.gov. A request filed by a party on "red light" under section 1.1910 of the Commission's rules will be dismissed.[23]

-FCC-

[23] 47 CFR §1.1164; 47 CFR §1.1910.

PUBLIC NOTICE

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

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

DA Number: 24-917
Released: September 11, 2024

PAYMENT METHODS AND PROCEDURES FOR FISCAL YEAR 2024 REGULATORY FEES

On September 6, 2024, the Federal Communications Commission (Commission or FCC) released *In the Matter of the Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*, Report and Order, FCC 24-93 (*FY 2024 Regulatory Fees Report and Order*). This document is available for viewing at http://www.fcc.gov/regfees. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 26, 2024.**[1] While FY 2024 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2024 regulatory fees due date.

INSTALLMENT PAYMENT RELIEF FOR FY 2024 REGULATORY FEES FOR QUALIFYING FEE PAYORS

In recognition of the substantial increase in FY 2024 regulatory fees for some Space Bureau fee payors, the Commission will permit those regulatory fee payors, and all other payors unable to pay their FY 2024 regulatory fee in full by September 26, 2024, to seek an installment plan with the Commission. **Fee payors seeking installment payment relief are encouraged but are not required to make a partial payment of their FY 2024 regulatory fees by the September 26, 2024 deadline, Due to technical limitations, partial fee payments must be made by wire transfer in accordance with the wire transfer instructions below.**

Fee payors may request an installment payment plan electronically by sending their requests to regfeerelief@fcc.gov **by September 26, 2024**. Fee payors that submit an installment payment request by September 26, 2024 will not be placed on "red light" and will not be assessed a 25% late payment penalty for non-payment of their FY 2024 regulatory fees. An installment payment request may be combined in a single filing with a waiver and deferral request made on financial hardship grounds.[2] Only those fee payors who demonstrate that they cannot pay their FY 2024 regulatory fees in full by September 26, 2024 will be granted installment payment relief. Fee payors permitted to pay their FY 2024 regulatory fees pursuant to an installment plan will not be required to make a down payment, and interest on their unpaid FY 2024 regulatory fees will accrue at the lowest rate permitted by law.

[1] The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier's check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2024 regulatory fees.

[2] 47 CFR § 1.1166.

YOU MUST BE REGISTERED WITH A USERNAME AND PASSWORD TO USE CORES

The Commission has discontinued the use of the Fee Filer system and incorporated this payment system into the Commission Registration System (CORES). To use CORES, you need to be registered with the FCC at https://apps2.fcc.gov/fccUserReg/pages/login.htm. Once your FCC username is registered and verified, you can access CORES and select the option to associate your existing FRN to that username, if you have not already done so. To make a FY 2024 regulatory fee payment, login to the following website using your username and password: https://apps.fcc.gov/cores/userLogin.do.

MANDATORY USE OF CORES

All regulatory fee payors are required to use CORES for fee filing and payment via Automated Clearing House (ACH), Visa or MasterCard debit card, or credit card. Licensees and regulatees must first enter CORES with a valid username and password at: https://apps2.fcc.gov/fccUserReg/pages/login.htm, and follow the online prompts to review their data and submit an electronic fee payment. **The use of CORES to pay regulatory fees is mandatory, and payments in the form of checks, money orders, and cashier's checks will not be accepted**.[3] To make a wire transfer payment, please enter CORES and submit your fee information, and then complete and fax your financial institution's wire cover memo and an electronic FCC Form 159 (or equivalent) to the Commission at (202) 418-2843, or send an e-mail to RROGWIREFAXES@fcc.gov at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting the account. Please include your **FRN, Voucher Number, Payer Name, and the Amount of the Wire** in the wire cover memo to assist us in posting your payment quickly, and to avoid costly delays that could result in penalties and interest for missing the payment due date. Please see the following link, https://www.fcc.gov/licensing-databases/fees/wire-transfer, for information on initiating a wire transfer. Please note that most wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day. Please also note that an ACH, credit card, or MasterCard or Visa debit card transaction could take several days for the payment to be transferred from a financial institution to the Commission. **Therefore, any automated notification you receive from the Commission or Pay.gov following submission of your payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank and credit card statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.**

Interstate Telecommunications Service Providers (ITSPs)
Please follow the guidance provided in the Fact Sheet: *What You Owe—Interstate Telecommunications Service Providers (ITSP) for FY 2024*.

Satellite Space Station Licensees
Please follow the guidance provided in the Fact Sheet: *What You Owe—International and Satellite Services Licensees for FY 2024.*

Earth Station Licensees
Please follow the guidance provided in the Fact Sheet: *What You Owe—International and Satellite Services Licensees for FY 2024.*

Cable Television Relay Service (CARS) Licensees
Please follow the guidance provided in the Fact Sheet*: What You Owe—Cable Television Systems, IPTV, and DBS for FY 2024.*

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[3] Payors should note that this change will mean that entities that have previously paid both regulatory fees and application fees at the same time by paper check will no longer be able to do so because regulatory fees payments by paper check will no longer be accepted.

Media Service Licensees
Please follow the guidance provided in the Fact Sheet: *What You Owe—Media Service Licensees for FY 2024.*

Commercial Wireless Services
Please follow the guidance provided in the Fact Sheet: *What You Owe—Commercial Wireless Service Licensees for FY 2024.*

Exemptions
Please see the guidance in the Fact Sheet: *Regulatory Fee Exemptions for FY 2024, General Exemptions.*

For additional information, filers in these and any other fee category may contact the Financial Operations help desk at 877-480-3201, Option 6. An additional number to call is (202) 418-1995.

LIMITATIONS ON CREDIT CARD TRANSACTIONS

In accordance with *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, Section 7055.20, *Transaction Maximums*, the highest amount that can be charged on a credit card for transactions with federal agencies is $24,999.99.[4] Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after submitting regulatory fee information through CORES. Further details will be provided regarding payment methods and procedures at the time of FY 2024 regulatory fee collection in Fact Sheets, available at https://www.fcc.gov/regfees. The *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, *Credit and Debit Card Collection Transactions* was updated on June 23, 2022, effective October 1, 2022, and reduced the credit card limit of intra-governmental transactions (government-to-government) from $24,999.99 to $10,000.00.

Regulatory fee payments that exceed the U.S. Treasury limit and are rejected by Treasury, causing a payment not to meet the required payment deadline, will be subject to interest, fees, and a 25% late payment penalty.

ELECTRONIC FILING AND PAYMENT PROCEDURES FOR ALL ENTITIES

All fee payors must enter the Commission's CORE system to begin the process of filing and paying FY 2024 regulatory fees. The CORES login is located at: https://apps.fcc.gov/cores/userLogin.do. After logging in with your username and password, select the "Manage Existing FRNs | FRN Financial | Bills and Fees" option, then select "Regulatory Fee Manager" to start the process of paying FY 2024 regulatory fees. It is the responsibility of each fee payor to determine its regulatory fee obligation. Although the Commission makes every effort to assure the accuracy of the information contained in CORES, the Commission cautions fee payors that any errors in the information contained in CORES do not relieve fee payors of their responsibility to pay their fees correctly. If necessary, fee payors must make adjustments, corrections, additions, or deletions to the information contained in CORES to pay all of their fee obligations.

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[4] Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and the Bureau of Fiscal Service rules. An amount owed that exceeds the $24,999.99 maximum, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the $24,999.99 maximum may not be split into two or more transactions over multiple days by using one or more cards. *Treasury Financial Manual*, Volume I, part 5, Chapter 7000, Section 7055.30, *Prohibition on Splitting Transactions*.

For assistance with regulatory fee rates/calculations, exemption status and de minimis questions, please contact the Financial Operations help desk at (877) 480-3201, Option #6. For technical assistance with making payments through CORES, please contact the CORES help desk at (877) 480-3201, Option #1.

PAYMENT METHODS

Licensees and regulatees may pay their regulatory fees by any of the following methods:

- Credit card (online) via CORES
- Wire transfer (submit via CORES)
- ACH/debit from bank account (online) via CORES
- Visa or MasterCard debit cards (online) via CORES

Checks, Money Orders, and Cashier's Checks are No Longer Accepted for Payment of Regulatory Fees[5]

Credit Card (online)**:**

- The FCC accepts Visa, MasterCard, Discover, and American Express.
- To pay online by credit card, fee payors must first submit electronic filing information through CORES, and will then have the option to pay online by choosing the "Pay by Credit Card" option.
- Limitations on credit card transactions: As noted previously, the U.S. Treasury will reject credit card transactions greater than $24,999.99 from a single credit card in a single day.

Any automated notification you receive from the Commission or Pay.gov following submission of your credit card payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.

Wire Transfer:

A wire transfer is a transaction that is initiated through a bank, authorizing the bank to wire funds from an account to the U.S. Treasury, New York, New York. All payments made by wire transfer payable to the Commission must be supported by faxing the "Wire Transfer Instructions" from CORES to the Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. The Wire Transfer Instructions can also be e-mailed to RROGWIREFAXES@fcc.gov. These instructions contain valuable information (e.g. FRN, Voucher Number, Payer Name, and the Amount of the Wire) that will help to post the payment more quickly, and avoid costly delays that could result in penalties and interest for missing the payment due date. Please note that most wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day, and wires initiated outside of the United States may take additional time. Fee payors should discuss arrangements (including bank closing schedules, and bank wire transaction fees for which the Commission is not responsible) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline, especially if the wire transfer is an international one. Complete instructions for making wire payments are posted at https://www.fcc.gov/licensing-databases/fees/wire-transfer. **Fee payors are responsible for obtaining confirmation from their financial institution that payment was successfully debited from the designated account(s) prior to the deadline to avoid additional fees**.

[5] Payors should note that this change will mean that entities that have previously paid both regulatory fees and application fees at the same time by paper check will no longer be able to do so because regulatory fees payments by paper check will no longer be accepted.

As a reminder, all regulatory fees MUST be filed, submitted and paid through CORES with the exception of wire transfers, which are initiated from the payor's financial institution. If you have any questions, please contact the Financial Operations help desk at 877-480-3201, Option 6. In addition, we urge all entities who send wire transfer payments to include the **Voucher Number, Payor Name, and Payor FRN in the wire description area.**

When initiating the wire transfer, please provide the bank with the following information to complete the transfer:

ABA Routing Number: 021030004
Receiving Bank: TREAS NYC
33 Liberty St.
New York, NY 10045

BNF: FCC/ACCT--27000001
OBI Field: (Skip one space between each information item)\"REGULATORY PAY"
Payor FRN: (Exactly as on remittance instrument)
Payor Name: (Exactly as on remittance instrument)
Phone: (Daytime Phone #, exactly as on remittance instrument)
Voucher Number: Exactly as on remittance (Form 159-E) instrument)

ACH Payments, Visa Debit Cards and MasterCard Debit Cards (Debit from Bank Account):

- To pay online from a bank account, fee payors must first submit their electronic filing information via CORES; licensees will then have the option to pay online by choosing the "Pay from Bank Account" option. **Note:** Fee payors are strongly encouraged to contact their financial institutions to confirm that the correct routing number for this method of payment is being used. Fee payors should also verify with their bank that their account has authorization to accept ACH or debit card transactions, as applicable to the payment method fee payors choose. The payor's bank may request the FCC's Company ID # 2700000103. **Please also note that any automated notification you receive from the Commission or Pay.gov following submission of your payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.**
- Fee payors may choose to pay by ACH using personal checking, personal savings, business checking, and business savings.
- For purposes of meeting the filing deadline, the Commission will consider payment to be received when account information is successfully accepted. Funds may not clear for up to **2** business days. **Fee payors are responsible for obtaining confirmation from their financial institution that payment was successfully debited from the designated account(s) prior to the deadline to avoid additional fees.**

DE MINIMIS REGULATORY FEE LEVEL

Regulatees whose total FY 2024 annual regulatory fee liability, including all categories of regulatory fees for which payment is due, is $1,000 or less are exempt from payment of FY 2024 regulatory fees. Thus, if the sum total of all annual FY 2024 regulatory fees is $1,000 or less, you are considered *de minimis* and do not have to pay FY 2024 regulatory fees. If you are *de minimis*, you will not need to report this exemption to the Commission. The *de minimis* threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year wireless filings), and it is not a permanent exemption. Rather, each regulatee will need to re-evaluate and re-calculate its regulatory fee liability each year in order to determine whether they meet the *de miminis* exemption established by the Commission's annual regulatory fee order. Regulatees are responsible for calculating their total fee obligation to determine whether they qualify for this *de minimis* exemption. The Commission reserves the right to request documentation that supports a *de minimis* exemption claim.

OTHER QUESTIONS REGARDING REGULATORY FEES

The following Fact Sheets and websites are available at http://www.fcc.gov/regfees to help licensees in the event they are unable to pay their FY 2024 regulatory fees by September 26, 2024:

Public Notice: *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2024 Regulatory Fees*

Fact Sheet: *Regulatory Fee Exemptions for FY 2024, General Exemptions*

ADDITIONAL INFORMATION

Licensees and regulatees should contact the Commission's Financial Operations Help Desk with inquiries regarding regulatory fees at (877) 480-3201 Option #6, (202) 418-1995, or e-mail inquiries to ARINQUIRIES@fcc.gov. If a licensee needs assistance with making a payment through CORES they should call (877) 480-3201 Option #1.

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-918
Released: September 11, 2024

WIRELINE COMPETITION BUREAU AND CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEK ADDITIONAL COMMENT ON REVISIONS TO IPCS PROVIDERS' ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

WC Docket Nos. 23-62, 12-375

Comments Due: 30 days after date of publication in the Federal Register
Reply Comments Due: 45 days after date of publication in the Federal Register

By this Public Notice, the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) (collectively, the Bureaus) invite supplemental comment to refresh and expand upon the record regarding the annual reporting and certification requirements for providers of incarcerated people's communications services (IPCS). The Commission requires IPCS providers to make annual filings "to enable the Commission to monitor and track trends in the IPCS marketplace, increase provider transparency, and ensure compliance with the Commission's rules."[1]

In an August 3, 2023 Public Notice, we sought comment on proposed revisions to the instructions and templates for the annual reports and annual certifications that the Commission requires IPCS providers to submit.[2] Subsequently, in the *2024 IPCS Order*, the Commission modified "the scope and

[1] *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-656, at 1 (WCB/CGB Aug. 3, 2023) (*August 2023 Public Notice*); *see also* 47 CFR § 64.6060; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-676, Appx. A (Annual Reporting and Certifications Instructions and Templates) (WCB June 24, 2022); Incarcerated People's Communications Services; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)), WC Docket Nos. 23-62 and 12-375, https://docs.fcc.gov/public/attachments/DOC-395700A1.docx (last visited Aug. 29, 2024) (Proposed 2023 IPCS Annual Reporting Instructions); Incarcerated People's Communications Services; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)), WC Docket Nos. 23-62 and 12-375, https://docs.fcc.gov/public/attachments/DOC-395701A1.docx (last visited Aug. 29, 2024) (Proposed 2023 IPCS Annual Reporting Word Template); Incarcerated People's Communications Services; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)), WC Docket Nos. 23-62 and 12-375, https://docs.fcc.gov/public/attachments/DOC-395702A1.xlsx (last visited Aug. 29, 2024) (Proposed 2023 IPCS Annual Reporting Excel Template); and Incarcerated People's Communications Services; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)), WC Docket Nos. 23-62 and 12-375, https://docs.fcc.gov/public/attachments/DOC-395703A1.docx (last visited Aug. 29, 2024) (Proposed 2023 IPCS Annual Reporting Certification Form).

[2] *August 2023 Public Notice* at 1. At the time the *August 2023 Public Notice* was published, only "IPCS providers that [were] classified as inmate calling services (ICS) providers under the Commission's rules [were] required to make these filings." *Id.* at 1. However, pursuant to the reforms adopted in the *2024 IPCS Order*, all IPCS providers are now required to make these filings. *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Report and

(continued….)

content of [its] annual reports to reflect the . . . expansion of Commission jurisdiction over other communications services in carceral facilities, including video IPCS and other advanced communications services, as well as intrastate IPCS, and the providers that offer these services"[3] under the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act).[4] In issuing this Public Notice, we seek to build on the record developed in response to our *August 2023 Public Notice* so it better reflects the Commission's expanded jurisdiction and the reforms adopted in the *2024 IPCS Order*.[5]

In the *2024 IPCS Order*, the Commission revised its rules by, *inter alia*:

- adopting permanent rate caps for audio IPCS and interim rate caps for video IPCS;
- adopting new facility tiers for both audio and video IPCS;
- prohibiting providers from imposing any ancillary service charges on IPCS consumers;
- prohibiting providers from making site commission payments for IPCS;
- allowing providers to offer alternate pricing plans for IPCS subject to certain conditions; and
- revising and strengthening IPCS accessibility requirements for incarcerated people with disabilities.[6]

The *2024 IPCS Order* also modified the scope and content of the annual reports to reflect the reforms adopted under the Martha Wright-Reed Act.[7] The Commission expanded its annual reporting and certification requirements to include the full scope of services and providers now subject to the IPCS rules.[8] The Commission also eliminated the sections of the annual reporting rules mandating the reporting of information on ancillary service charges and site commissions, to reflect the prohibition of those items adopted in the *2024 IPCS Order*.[9] Finally, the Commission reaffirmed and updated its prior delegation of authority to the Bureaus to revise the annual reports, to reflect the Commission's expanded authority under the Martha Wright-Reed Act and the other actions taken in the *2024 IPCS Order*, and directed that the Bureaus pay particular attention to the video IPCS marketplace and the availability and usage of Telecommunications Relay Services (TRS) in exercising this delegated authority.[10]

Pursuant to this delegated authority, we seek to expand and refresh the record on revisions to the Annual Report instructions, templates, and certification form, in addition to those proposed in the *August 2023 Public Notice*, and to implement the modifications to the annual reporting and certification requirements adopted by the Commission in the *2024 IPCS Order*. We also seek comment on any additional modifications the Bureaus should consider to make to these forms consistent with the new

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Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75, Appx. A (Final Rules) at 332, § 64.6000 (definition of Provider of Incarcerated People's Communications Services) (2024) (*2024 IPCS Order*).

[3] *2024 IPCS Order* at 296, para. 565.

[4] Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d) (Martha Wright-Reed Act).

[5] *See generally 2024 IPCS Order*.

[6] *See generally id*.

[7] *Id.* at 296-300, paras. 565-70.

[8] *See id.* at 298, para. 569.

[9] *See id.* at 298, para. 570. The Commission also retained the rules describing the reporting requirements concerning TRS and related communications services, but renumbered them.

[10] *See 2024 IPCS Order* at 299-300, paras. 571-72.

rules, including the varied compliance dates adopted in the *2024 IPCS Order*. Although the Bureaus seek comment below on specific changes to the annual reporting and certification requirements, we also seek comment, generally, on any further modifications necessary to reflect the comprehensive reforms contained in the *2024 IPCS Order*.

In particular, we invite comment on ways to: ensure consistency between the new IPCS rules and annual reporting and certification requirements; streamline the existing requirements consistent with the new rules; and make the reports more clear and/or accurate. For example, we seek comment on revisions to the General Instructions and Definitions to clarify that the annual reporting requirement now applies to all IPCS providers and IPCS communication services, and to conform the definitions to those adopted in the *2024 IPCS Order*.[11] We also invite comment on any necessary additions to the reporting requirements. In the *2024 IPCS Order*, the Commission directed that we "pay particular attention to how best to capture developments in the rapidly changing, but nascent video IPCS marketplace in updating the requirements for the annual reports."[12] We seek comment on how we might best implement this Commission directive. We also seek comment on how to collect information concerning alternate pricing plans, and on the appropriate level of granularity for such data.[13] In addition, we seek comment on collecting information concerning facilities' IPCS costs, such as requiring providers to report information on any reimbursements they provide to facilities.[14]

We invite comment on whether there is additional information we should seek relating to the use of TRS in carceral facilities, beyond what was proposed in the *August 2023 Public Notice*. In the *2024 IPCS Order*, the Commission directed that we consider "not only the availability of TRS, but growth of both the user base and the use of TRS, capturing data on the number of individuals with disabilities who are requesting access to the additional forms of TRS in carceral facilities, changes in the monthly minutes of use for each type of TRS, and other useful metrics" in revising the requirements for the Annual Reports.[15] We invite comment on how we might best implement this Commission directive.

Are there other changes we should make to streamline the reporting requirements? Should we consider combining the separate questions on intrastate and interstate rates into a single set of questions to reduce burdens on respondents? What about the idea of removing references to the provider-related and facility-related rate components?[16] Would that change condense the annual reports submitted? Similarly, to what extent should we align the reporting approach for video IPCS with that for audio IPCS?

Finally, are there other changes or additions we should make to gather better or more accurate data or to make the instructions more precise? For example, what information or data should we require to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Should we require providers to submit audited financial statements or similar documentation as part of their annual report filings, as the Commission required for the 2023 Mandatory Data Collection?[17] Conversely, are there any proposed instructions, inquiries, or data fields that should be

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[11] *See 2024 IPCS Order*, Appx. A at 329-32, § 64.6000.

[12] *2024 IPCS Order* at 300, para. 571.

[13] *See 2024 IPCS Order* at 230-50, paras. 427-71.

[14] *See id.* at 133-34, para. 246 (permitting IPCS providers to reimburse facilities for used and useful costs incurred to enable the provision of IPCS).

[15] *2024 IPCS Order* at 300, para. 571.

[16] *See id.* at 60-90, paras. 117-58.

[17] *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order, 38 FCC Rcd 6625, 6644, para. 55 (WCB/CGB July 26, 2023).

removed because they are unnecessary to ensure that providers report uniform and accurate data and other information, or because they are inconsistent with the *2024 IPCS Order*? Finally, we seek comment on the relative benefits and burdens of any proposed modifications to the reporting and certification requirements.

PROCEDURAL MATTERS

Filing of Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System. *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).[18]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive issues raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission.

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.

Ex Parte Presentations. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[19] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the

[18] The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Protective Order, DA 23-298 (WCB Apr. 5, 2023). Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order. *See also Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB Sept. 1, 2020) (clarifying non-confidential treatment for certain information).

[19] 47 CFR § 1.1200 *et seq.*

presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.[20] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information, please contact Stephen Meil, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-7233 or via e-mail at Stephen.Meil@fcc.gov or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at Michael.Scott@fcc.gov.

- FCC -

[20] *Id.* § 1.1206(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 24-919
Released: Sep 11, 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 HURRICANE FRANCINE IN LOUISIANA

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), at the request of the State of Louisiana and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, announces the activation of the Disaster Information Reporting System (DIRS) in response to communications impacted by Hurricane Francine. 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 communications provider has any problems accessing DIRS, please contact FCC personnel at any of the numbers listed below.

In DIRS, this activation will have the following name: FRANCINE. Communications providers are advised that for providers that participate in DIRS, PSHSB hereby waives the separate Network Outage Reporting System (NORS) obligations for the duration of the DIRS activation with respect to outages in the geographic areas where DIRS has been activated. Providers that participate in DIRS remain required, where applicable, to report incidents in NORS that have reportable effects that fall outside the DIRS activation areas. **Reports are requested at 10:00 a.m. (EDT) on September 12, 2024 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.

PARISHES OF INTEREST FOR THIS DIRS ACTIVATION INCLUDE THE FOLLOWING:

Louisiana: Acadia, Ascension, Assumption, Baton Rouge (East), Baton Rouge (West), Evangeline, Feliciana (East), Feliciana (West), Iberia, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, and Washington.

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]

PARISHES OF INTEREST FOR THIS MDRI ACTIVATION INCLUDE THE FOLLOWING:

Louisiana: Acadia, Ascension, Assumption, Baton Rouge (East), Baton Rouge (West), Evangeline, Feliciana (East), Feliciana (West), Iberia, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, 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 Hurricane Francine 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 Hurricane Francine, please go to https://www.fcc.gov/Francine.

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

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[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 to 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-24-920
Released: September 11, 2024

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

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 Hurricane Francine. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.[1] Specifically, requests must include the following certification: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862." Presentations that directly relate to the emergency posed by Hurricane Francine are exempt from the restrictions of the Commission's *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.[2]

- **Media Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Francine and filed pursuant to section 73.1635 of the Commission's rules[3] may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & 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 Hurricane Francine request and the date the initial request was granted.
  - **Office of International Affairs Contact During Business Hours:**
    - **Submarine Cables and International 214s**:
        - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
        - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
        - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
    - **International High Frequency Broadcast Station**:
        - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
        - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
  - **Office of International Affairs Contact During Non-Business Hours:**
        - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Francine 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**:
      - Kathyrn Medley, 202-418-1211, Kathyrn.Medley@fcc.gov
      - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
      - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
  - **Space Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Competition Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Hurricane Francine 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 Hurricane Francine 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

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Released: September 11, 2024

THE FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO HURRICANE FRANCINE

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

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
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DA-24-922
Released: September 11, 2024

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

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 Hurricane Francine.

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
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DA-24-923
Released: September 11, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS IMPACTED BY HURRICANE FRANCINE

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

Hurricane Francine may cause widespread damage and significant impacts to communications services and infrastructure. Hurricanes and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove 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

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Released: September 11, 2024

Proposed Fourth Quarter 2024 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the fourth quarter of 2024 will be 0.358 or 35.8 percent.[1]

Rules for Calculating the Contribution Factor

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

USAC Projections of Demand and Administrative Expenses

Pursuant to section 54.709(a)(3) of the Commission's rules[4], the Universal Service Administrative Company (USAC) submitted projections of demand and administrative expenses for the fourth quarter of 2024.[5] Pursuant to the Commission's direction and the Commission's rules,[6] the Wireline Competition Bureau (WCB), in consultation with OMD, previously directed USAC to carry forward any unused funds from prior funding years to the extent necessary to satisfy funding year 2024 Rural Health Care program demand. Further, for the fourth quarter 2024, WCB and OMD instructed USAC to apply $29.49 million in unused funds to offset the $176.73 million projected Rural Health Care program demand (based on the annual cap of $706.93 million for funding year 2024). This offset reduces the fourth quarter 2024 contribution factor to a level below what the contribution factor would be based

[1] *See* 47 C.F.R. § 54.709(a).

[2] *See id.*

[3] *See* 47 C.F.R. § 54.709(a)(2).

[4] *See* 47 C.F.R. § 54.709(a)(3).

[5] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2024, available at <https://www.usac.org/fcc-filings> (filed August 2, 2024) (*USAC Filing for Fourth Quarter 2024 Projections*); *See also* Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Fourth Quarter 2024, available at <https://www.usac.org/fcc-filings> (filed August 30, 2024) (*USAC Filing for Fourth Quarter 2024 Contribution Base*).

[6] *See* 47 C.F.R. § 54.619(a)(5).

on USAC's filings.[7]

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

Dollars in Millions				
USF Programs	**Demand**	**Administrative Expenses**	**Prior Period Adjustments**	**Contribution Requirement**
Schools & Libraries	$631.83	$23.23	$11.22	$666.28
Rural Health Care	$138.36	$8.88	$2.81	$150.05
High Cost	$1,118.19	$21.97	-$70.22	$1,069.94
Lifeline	$256.39	$22.80	-$80.82	$198.37
TOTAL	**$2,144.77**	**$76.88**	**-$137.01**	**$2,084.64**

USAC Projections of Industry Revenues

USAC submitted projected collected end-user telecommunications revenues for October 2024 through December 2024 based on information contained in the Fourth Quarter 2024 Telecommunications Reporting Worksheet (FCC Form 499-Q).[8] The amount is as follows:

Total Projected Collected Interstate and International End-User Telecommunications Revenues for Fourth Quarter 2024: $7.972750 billion.

Adjusted Contribution Base

To determine the quarterly contribution base, we decrease the fourth quarter 2024 estimate of projected collected interstate and international end-user telecommunications revenues by the projected revenue requirement to account for circularity and decrease the result by one percent to account for uncollectible contributions. Accordingly, the quarterly contribution base for the fourth quarter of 2024 is as follows:

Adjusted Quarterly Contribution Base for Universal Service Support Mechanism

(Fourth Quarter 2024 Revenues - Projected Revenue Requirement) * (100% - 1%)

= ($7.972750 billion – $2.084640 billion) * 0.99

=$5.829229 billion.

Unadjusted Contribution Factor

Using the above-described adjusted contribution base and the total program collection (revenue requirement) from the table above, the proposed unadjusted contribution factor for the fourth quarter of 2024 is as follows:

[7] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2024, available at <http://www.usac.org/fcc-filings> (filed August 2, 2024) (*USAC Filing for Fourth Quarter 2024 Projections*).

[8] *USAC Filing for Fourth Quarter 2024 Contribution Base* at 4.

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Adjusted Quarterly Contribution Base

=$2.084640 billion / $5.829229 billion

=0.357618

Unadjusted Circularity Factor

USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter. Accordingly, the proposed unadjusted circularity factor for the fourth quarter of 2024 is as follows:

Unadjusted Circularity Factor for Universal Service Support Mechanisms

= Total Program Collection / Projected Fourth Quarter 2024 Revenues
= $2.084640 billion / $7.972750 billion
= 0.261471

Proposed Contribution Factor

The Commission has directed OMD to announce the contribution factor as a percentage rounded up to the nearest tenth of one percent.[9] Accordingly, the proposed contribution factor for the fourth quarter of 2024 is as follows:

35.8%

Proposed Circularity Discount Factor

The Commission also has directed OMD to account for contribution factor rounding when calculating the circularity discount factor.[10] Accordingly, the proposed circularity factor for the fourth quarter of 2024 is as follows:

0.262258[11]

Conclusion

If the Commission takes no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of this Public

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

[10] *Id*.

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

Notice, they shall be deemed approved by the Commission.[12] USAC shall use the contribution factor to calculate universal service contributions for the fourth quarter of 2024. USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter.[13] USAC includes contribution obligations less the circularity discount in invoices sent to contributors. Contribution payments are due on the dates shown on the invoice. Contributors will pay interest for each day for which the payments are late. Contributors failing to pay contributions in a timely fashion may be subject to the enforcement provisions of the Communications Act of 1934, as amended, and any other applicable law. In addition, contributors may be billed by USAC for reasonable costs of collecting overdue contributions.[14]

We also emphasize that carriers may not markup federal universal service line-item amounts above the contribution factor.[15] Thus, carriers may not, during the fourth quarter of 2024, recover through a federal universal service line item an amount that exceeds 35.8 percent of the interstate telecommunications charges on a customer's bill.

In addition, under the limited international revenues exception (LIRE) in section 54.706(c) of the Commission's rules, a contributor to the universal service fund whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on projected collected interstate end-user telecommunications revenues, net of projected contributions.[16] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any entity whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user revenues.[17] The proposed contribution factor exceeds 12 percent, which we recognize could result in a contributor being required to contribute to the universal service fund an amount that exceeds its interstate end-user telecommunications revenue. Should a contributor face this situation, the contributor may petition the Commission for waiver of the LIRE threshold.[18]

For further information, contact Daniel Daly at (202) 418-1832 or Kim Yee at (202) 418-0805, TTY (888) 835-5322, in the Office of Managing Director.

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[12] *See* 47 C.F.R. § 54.709(a)(3).

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

[14] *See* 47 C.F.R. § 54.713.

[15] *See* 47 C.F.R. § 54.712.

[16] *See* 47 C.F.R. § 54.706.

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

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-925
Released: September 11, 2024

FEDERAL COMMUNICATIONS COMMISSION OPENS DOCKET FOR PROPOSED TRANSFER OF WIRELESS OPERATIONS, CUSTOMERS, AND CERTAIN SPECTRUM LICENSES AND SPECTRUM LEASES OF USCELLULAR TO T-MOBILE

GN Docket No. 24-286

On May 28, 2024, T-Mobile US, Inc. (T-Mobile) and United States Cellular Corporation (UScellular) announced an agreement for the transfer of wireless operations, customers, and certain spectrum licenses and spectrum leases held by UScellular to T-Mobile. Applications seeking Commission consent to the transaction are expected to be filed in the coming days. The purpose of this public notice is to announce the opening of a docket, GN Docket No. 24-286, and to articulate the *ex parte* status of discussions related to the proposed transaction. When the applications have been accepted for filing, we will issue a separate public notice announcing that fact and setting forth a pleading cycle.

Pursuant to section 1.1200(a) of the Commission's rules,[1] the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that as of the time the applications are filed, this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.[2]

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[3] 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,

[1] 47 CFR § 1.1200(a).

[2] 47 CFR § 1.1206.

[3] 47 CFR §§ 1.1200 *et seq.*

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).[4] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements. All filings must include a reference to GN Docket No. 24-286, and may be filed 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.
  - 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 deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service First-Class, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, D.C. 20554.

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).

One copy of each *ex parte* submission also must be delivered electronically, by email, or if delivered as paper copy, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: 1) Susannah Larson, Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau, at susannah.larson@fcc.gov; 2) Nick Copeland, Economic Analysis Division, Office of Economics and Analytics, at nicholas.copeland@fcc.gov; 3) Stephanie Asous, Mobility Division, Wireless Telecommunications Bureau, at stephanie.asous@fcc.gov; 4) Nadja Sodos-Wallace, Broadband Division, Wireless Telecommunications Bureau, at nadja.sodoswallace@fcc.gov; and 5) Joel Rabinovitz, Office of General Counsel, at joel.rabinovitz@fcc.gov.

-FCC-

[4] 47 CFR § 1.1206(b).

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. 24-926

Report No. SCL-00484 **Thursday September 12, 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.

SCL-T/C-20240702-00031 E Quintillion Subsea Operations, LLC
Transfer of Control
Grant of Authority Date of Action: 09/11/2024

Current Licensee: Quintillion Subsea Operations, LLC
FROM: QSH Parent HoldCo, LLC
TO: QSH Parent HoldCo, LLC

On July 2, 2024, Quintillion Subsea Operations, LLC (Quintillion) filed a notification of the pro forma transfer of control of Quintillion, effective June 28, 2024. Quintillion, a Delaware limited liability company, is a licensee of the Quintillion System, SCL-LIC-20160325-00009, a fiber optic network connecting points in Alaska.

Quintillion is an indirect wholly owned subsidiary of QSH Parent Holdco, LLC (QSH Parent) that is an indirect wholly owned subsidiary of Q Gateway Ultimate Holdings LLC (Ultimate Holdings). Ultimate Holdings is managed by Grain Capital, LLC (Grain Capital), which is wholly owned by David J. Grain, a U.S. citizen. Quintillion, QSH Parent, Ultimate Holdings, and Grain Capital are all Delaware companies.

In a corporate restructuring that was completed on June 28, 2024, the two intermediate holding companies between Quintillion and QSH Parent were removed. Specifically, Quintillion Subsea Holdings, LLC and QSH Intermediate Holdco, LLC, both Delaware companies, were removed from the organizational structure. As a result, Quintillion is now a direct wholly owned subsidiary of QSH Parent.

INFORMATIVE

SCL-STA-20240626-00028 GCI Communication Corp.

On September 11, 2024, we granted the special temporary authority (STA) filed by GCI Communication Corp. (GCICC) to continue operation of the Alaska United East Cable System (AU-East) (SCL-LIC-19961205-00615, SCL-LIC-19980602-00008, SCL-MOD-20020409-00018, SCL-MOD-20020409-00019) while the Commission considers an application for a new cable landing license for the AU-East Cable System (SCL-LIC-20240815-00036). GCICC 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. GCICC acknowledges that such STA can be revoked by the Commission on its own motion without a hearing.

The STA expires on March 10, 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 (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 24-927

Report No. TEL-02392 **Thursday September 12, 2024**

International Authorizations Granted

Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

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.

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-214-20240628-00110 E Bigly Sales, Inc.
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action: 09/06/2024

Bigly Sales, Inc. (Bigly) filed an application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2). The Applicant filed supplements on July 5, 2024 and August 12, 2024.

Bigly is a Delaware corporation. Thomas Ryan, a U.S. citizen, has a 70% ownership interest in Bigly. The Brooke Teagan Ryan 2017 Irrevocable Trust, the Finn Matteo Ryan 2022 Irrevocable Trust, and the Thomas Sergio Ryan 2019 Irrevocable Trust, all U.S. entities, each holds a 10% ownership interest in Bigly. Trog Hawley Fiduciary, LLC, a Nevada limited liability company, serves as the trustee for each of the trusts. The managing directors are: Diana L. Ryan, Adam C. Ryan, Tracey Briones, and Thomas Ryan, all U.S. citizens. The beneficiaries of the trusts are minor children.

ITC-214-20240809-00135 E Rogue Mobile Inc.
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action: 09/06/2024

Rogue Mobile Inc. (Rogue Mobile) 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).

Rogue Mobile, a Delaware corporation, is owned by two individuals, both U.S. citizens: Chung-Chih John Liu (50%) and Alexander Fong-Cheng Tsao (50%).

ITC-T/C-20240807-00128 E Public Service Data, Inc.

Transfer of Control

Grant of Authority Date of Action: 09/11/2024

Current Licensee: Public Service Data, Inc.

FROM: Public Service Communications, Inc.

TO: Public Service Communications, Inc.

On August 7, 2024, Public Service Data, Inc. (PSD), a Georgia corporation that holds an international section 214 authorization for global resale service (ITC-214-20040908-00355), filed a notification of the pro forma transfer control of PSD, effective July 12, 2024. PSD is a wholly owned subsidiary of Public Service Communications, Inc. (PSC), a Georgia corporation. The Applicant filed a supplement on August 20, 2024.

Prior to the transaction, PSC was owned by three family members, all U.S. citizens: Donald E. Bond (36.01%), E. Kelly Bond (34.29%), and James L. Bond (31.33%). On July 12, 2024, Donald E. Bond distributed his shares to his sons and trusts were established for the benefit of the son's minor children. After the redistribution of the shares, the current owners of PSC are: E. Kelly Bond (33.14%), James L. Bond (33.14%), Kelly Bond Wealth Preservation Trust (16.56%), and the Jim Bond Wealth Preservation Trust (16.56%). Both trusts are organized in the United States. E. Kelly Bond and James L. Bond each control 50% of the shares of PSC through a combination of their direct holdings and their positions as trustees of the Kelly Bond Wealth Preservation Trust and the Jim Bond Wealth Preservation Trust, respectively.

SURRENDER

ITC-214-20090624-00301 Stanacard, LLC

On September 3, 2024, Stanacard, LLC 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. 47 CFR § 63.11. 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. 47 CFR § 63.10.

(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, 47 CFR § 63.10, 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 CFR § 61.19. Except as specified in section 20.15 with respect to commercial mobile radio service providers, 47 CFR § 20.15, carriers regulated as non-dominant, as defined in section 61.3, 47 CFR § 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. 47 CFR §§ 42.10, 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). The route list must be filed through the International Communications Filing System (ICFS). https://www.fcc.gov/icfs

(8) Any U.S. Carrier that owned, leased oh holds an indefeasible right of use (IRU) for 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. 47 CFR § 63.19.

(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. 47 CFR §§ 64.1902, 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, 47 CFR § 63.10, 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 63.09. 47 CFR § 63.09.

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

(14) Carriers shall make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law, including but not limited to:
(A) The Wiretap Act, 18 U.S.C. 2510 et seq.;
(B) The Stored Communications Act, 18 U.S.C. 2701 et seq.;
(C) The Pen Register and Trap and Trace Statute, 18 U.S.C. 3121 et seq.; and
(D) Other court orders, subpoenas or other legal process;

(15) Every carrier must designate an agent for service in the District of Columbia. see 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 63.18(q), 64.1195.

(16) Every carrier must designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process. 47 CFR § 63.18(q).

(17) Each carrier shall notify the Commission of any change in its contact information within thirty (30) days. 47 CFR § 63.18(q). 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 or at FCC-OIA-TAD@fcc.gov.

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

In the Matter of	)	
	)	
Applications of T-Mobile US, Inc. and United States Cellular Corporation	)	GN Docket No. 24-286
	)	
For Consent To Transfer Control of Licenses and Authorizations	)	

PROTECTIVE ORDER

Adopted: September 11, 2024 **Released: September 11, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed in this proceeding, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information submitted by participants in this proceeding and information we request as relevant and material to the issues raised in the anticipated applications constitute the record on which the Commission must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."[1]

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules, unless the Commission determines, *sua sponte*

[1] 47 U.S.C. § 154(j).

or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules,[2] that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

"Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the FOIA and the Commission's implementing rules; and that the Submitting Party or a Third-Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Protective Order, as the same may be amended from time to time; unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

"In-House Counsel" means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel's employer is considered his or her client.)

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Party" means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

[2] 47 CFR §§ 0.459, 0.461.

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

"Third-Party Interest Holder" means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party's representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.[3]

4. *Challenge to Designation*. Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.[4] Any decision on whether the

[3] *See* 47 CFR § 0.459(a).

[4] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.[5]

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System ("ECFS") a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.[6] Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED–FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information. In addition, copies of each Stamped Confidential Document and Stamped Highly Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Susannah Larson, susannah.larson@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

6. *Copying Sensitive Documents*. If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining* Access *to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known

[5] *See* 47 CFR §§ 0.459(h), 0.461.

[6] If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary's Office along with the appropriately stamped cover letter.

Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*[7] Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.[8] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

[7] This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

[8] An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

10. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. A Submitting may, but is not required to, transmit the information electronically to a Reviewing Party. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential and Highly Confidential Information*. Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission*. A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION–SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 24-286 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.[9] The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED–FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential

[9] If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Susannah Larson, susannah.larson@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

16. *Requests for Additional Disclosure*. If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.[10]

17. *Client Consultation*. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

18. *No Waiver of Confidentiality*. Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *Subpoena by Courts, Departments*, *or Agencies*. If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped

[10] 47 CFR §§ 0.442, 0.461.

Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Protective Order*. Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions*. Questions concerning this Protective Order should be addressed to Susannah Larson, susannah.larson@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, or to Joel Rabinovitz, joel.rabinovtiz@fcc.gov, Transaction Team, Office of General Counsel.

23. *Authority*. This Order is issued pursuant to sections 4(j) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 310(d), and authority delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Stamped Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share, or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides numbers of customers and revenues broken down by customer type (e.g., business) and zip code or market area (e.g., CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market, and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, or maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B

Acknowledgment of Confidentiality

GN Docket No. 24-286

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 20__.

_____
[Name]
[Position]
[Firm]
[Telephone]

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 24-929
Released: September 11, 2024

MEDIA BUREAU REMINDS UNITED STATES-BASED FOREIGN MEDIA OUTLETS OF NEXT SEMI-ANNUAL DISCLOSURE DEADLINE

Reports Due by October 11, 2024

Section 1085 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) amended the Communications Act of 1934 (the Communications Act) to add section 722, which requires all "United States-based foreign media outlets" to submit to the Commission a report containing: 1) the name of such outlet; and 2) a description of the relationship of such outlet to the foreign principal of such outlet, including a description of the legal structure of such relationship and any funding that such outlet receives from such principal.[1] The report is to be submitted no later than 60 days after the date of the enactment of the NDAA and no less frequently than every 6 months thereafter.[2] As the previous report was due on April 11, 2024, the deadline for outlets to submit the next NDAA report to the Commission is **October 11, 2024**.

The Commission has established an e-mail inbox, at ndaareport@fcc.gov, that outlets should use to submit the reports. Respondents should format the reports as Adobe® Acrobat® (PDF) or Microsoft® Word documents and attach them to the e-mail. The e-mail submitting the report should include a subject or caption referring to the NDAA disclosure requirement and the name of the outlet. Respondents are reminded that the contents of the reports are subject to the provisions of the United States Code governing statements or representations made before the Commission.[3]

For purposes of this disclosure requirement, the NDAA provides that the term "United States-based foreign media outlet" means an entity that (A) produces or distributes video programming (as defined in section 602 of the Communications Act) that is transmitted, or intended for transmission, by a multichannel video programming distributor (as defined in such section) to consumers in the United States; and (B) would be an agent of a foreign principal for purposes of the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. § 611 et seq.) but for section 1(d) of FARA (22 U.S.C. § 611(d)).[4] The Communications Act defines the term "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."[5] The term "multichannel video programming distributor" means "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television

[1] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §1085(a) (2018) (NDAA).

[2] 47 U.S.C. § 624(a).

[3] 18 U.S.C. § 1001.

[4] 47 U.S.C. § 624(d)(2).

[5] 47 U.S.C. § 522(20).

receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."[6]

The NDAA provides that the term "foreign principal" has the meaning given such term in Section 1(b)(1) of FARA (22 U.S.C. § 611(b)(1)).[7] Section 1(b)(1) of FARA provides that "a government of a foreign country and a foreign political party" are included in the definition of a "foreign principal."[8] Section 1(c) of FARA provides that, except "as provided in subsection (d) of this section, the term 'agent of a foreign principal' means (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person--(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection."[9]

Section 1(d) of FARA states that the "term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of section 611, or by any agent of a foreign principal required to register under this subchapter."[10]

Consistent with the requirements of the NDAA, the Commission will transmit to Congress a report that summarizes the contents of the reports submitted by United States-based foreign media outlets within 90 days from the date of enactment, and not less frequently than every 6 months thereafter.[11] As the Commission transmitted the previous report on or before May 9, 2024, the Commission will transmit the next report on or before November 9, 2024. In addition, the Commission will make publicly available on its website each report submitted by a United States-based foreign media outlet no later than the earlier of (1) 30 days after the outlet submits its report to the Commission or (2) the date on which the

[6] 47 U.S.C. § 522(13).

[7] 47 U.S.C. § 624(d)(1).

[8] 47 U.S.C. § 624(d)(1); 22 U.S.C. § 611(b)(1). We note that the Department of Justice has adopted regulations implementing the Foreign Agents Registration Act of 1938, including definitions of statutory terms. *See* 5 CFR §§ 5.1, *et seq.; id.* § 5.100.

[9] 22 U.S.C. § 611(c).

[10] 22 U.S.C. § 611(d).

[11] NDAA, §1085(b) (codified at 47 U.S.C. § 624(b)).

Commission transmits its report to Congress.[12] These reports and the Commission's report to Congress can be found on the website of the Media Bureau: https://www.fcc.gov/united-states-based-foreign-media-outlets.

For additional information, contact James Elustondo, James.Elustondo@fcc.gov, of the Media Bureau, Industry Analysis Division, at (202) 418-1801. Press inquiries should be directed to Nancy Murphy, Nancy.Murphy@fcc.gov, at (202) 418-1043.

- FCC -

[12] NDAA, §1085(c) (codified at 47 U.S.C. § 624(c)).

PUBLIC NOTICE

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

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

DA No. 24-930

Report No. SCL-00485 **Thursday September 12, 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.

SCL-MOD-20240515-00013 E Unicom, Inc.

Modification

Grant of Authority Date of Action: 09/11/2024

Unicom, Inc. (Unicom) filed an application for authority to modify the cable landing license for the Airraq submarine cable system (Airraq) (SCL-LIC-20230718-00023), to include two new segments connecting two new landing points in Quinhagak and Togiak, Alaska. On June 28, 2024, the Commission placed the application on public notice. See File No. SCL-MOD-20240515-00013, Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00471S, Public Notice (OIA June 28, 2024). No comments or oppositions were filed in response to the Public Notice.

According to the Applicant, the new landing points at Quinhagak and Togiak are cable landings in connection with a larger fiber buildout to develop infrastructure in Alaska's Yukon-Kuskokwim Delta in partnership with Bethel Native Corporation, an Alaska Native Corporation engaged in diverse businesses to serve Alaska's Native community. The Airraq system and connecting terrestrial infrastructure will be funded in part by broadband grants through the Tribal Broadband Connectivity Program of the National Telecommunications and Information Administration and the U.S. Department of Agriculture's Rural Utilities Service ReConnect Program. Unicom expects Airraq to commence commercial service during the 1st quarter of 2025. Unicom expects construction to begin on the Quinhagak segment in 2024 and on the Togiak segment in 2026.

On June 20, 2024, the Commission granted Unicom Special Temporary Authority (STA) to construct, connect, and test at its own risk the Quinhagak and Togiak segments prior to the Commission's action of this application. See File No. SCL-STA-20240610-00025, Report No. SCL-00469, Actions Taken Under Cable Landing License Act, Public Notice, DA 24-592 (OIA Jun 21, 2024).

Licensing History. On April 11, 2024, the Commission granted a cable landing license to Unicom to construct, land and operate a non-common carrier fiber optic submarine cable system, the Airraq submarine cable system, to connect Dillingham, Platinum, and Eek, Alaska. Grant of the license was conditioned on Unicom, Inc. and GCI Communication Corp. abiding by the commitments and undertakings contained in their March 18, 2024 Letter of Agreement to the Under Secretary for Strategy, Policy and Plans, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security, and the Office of Foreign Investment Review, Director Undersecretary of Acquisition and Sustainment, U.S. Department of Defense (March 2024 LOA). See File No. SCL-LIC-20230718-00023, Report No. SCL-00459, Actions Taken Under Cable Landing License Act, Public Notice, DA 24-349 (OIA April 12, 2024) (Airraq Grant PN).

Executive Branch Coordination. 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 File No. SCL-MOD-20240515-00013, Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00472S, Public Notice (OIA July 5, 2024).

In the Executive Branch Review Process Order, the Commission set out types of applications that would generally be referred to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy issues. See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket 16-155, Report and Order, 35 FCC 10927, 10935-36, para. 24 (2020); see also 47 CFR § 1.40001(a)(1). Those applications do not include cable landing license applications where there is no reportable foreign ownership as is the case here. Therefore, we did not refer this application to the Executive Branch agencies. Although we did not formally refer this application, we provided a courtesy copy of the Public Notice to the Executive Branch agencies due to the request from Unicom to condition grant of the application on compliance with the March 2024 LOA (see below). The agencies did not file comments.

Actions Taken: We grant the modification of the cable landing license for the Airraq cable system to add landing points at Quinhagak and Togiak, Alaska, as conditioned in this public notice.

Licensee Information. Unicom is a wholly owned subsidiary of GCI Communication Corp. (GCICC), both Alaska corporations. GCICC is a wholly owned subsidiary of GCI Holdings, Inc., which in turn is a wholly owned subsidiary of Ventures Holdco, LLC (Ventures Holdco), both Delaware entities. Ventures Holdco is a wholly owned subsidiary of GCI, LLC, which in turn is a wholly owned subsidiary of Grizzly Merger Sub 1 LLC, which is a direct wholly owned subsidiary of Liberty Broadband Corporation (Liberty Broadband), all Delaware entities. Dr. John C. Malone, a U.S. citizen, holds a 48.9% voting interest and an approximate 6.074% equity interest in Liberty Broadband. Unicom states that no other individual or entity holds a 10% or greater economic or voting interest in Unicom.

Cable Design and Capacity. Airraq is a high-fiber-count system deploying space division multiplexing technology. Airraq will land in five locations with four segments: (1) an approximately 381 kilometer segment connecting the Dillingham, Alaska cable landing station to the Platinum, Alaska cable landing station (the Dillingham-Platinum segment), (2) an approximately 110 kilometer segment connecting a branching unit of the Dillingham-Platinum segment to the Togiak cable landing station (the Togiak segment), (3) an approximately 155 kilometer segment connecting the Platinum, Alaska cable landing station to the Eek, Alaska cable landing station (the Platinum-Eek segment), and (4) an approximately 34 kilometer segment connecting the Platinum-Eek segment to the Quinhagak cable landing station (the Quinhagak segment). The Dillingham-Platinum and Platinum-Eek segments have 12 fiber pairs, each having a design capacity of approximately 3.2 terabits per second (Tbps) using current technology. The Togiak and Quinhagak segments have six fiber pairs, each having a design capacity of approximately 1.6 Tbps using current technology. All of the cable landing stations will be newly built. Unicom will own and control all four segments and all five cable landing stations for Airraq.

Ownership of the Cable System. Unicom will own and operate the entire Airraq system, including the two new segments and cable landing stations at Quinhagak and Togiak.

Regulatory Status of the Cable. Unicom will continue to operate Airraq on a non-common carrier basis. See Airraq Grant PN.

Conditions. Unicom shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of section 1.768 of the Commission's rules, 47 CFR § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

Unicom states that it is in compliance with the March 2024 LOA and will continue to comply with it. Unicom requests that the Commission condition grant of this modification application on its continued compliance with the March 2024 LOA. We grant Unicom's request and condition grant of the modification application on the continued compliance by Unicom and GCICC with the commitments made in the March 2024 LOA. The March 2024 LOA is publicly available and may be viewed on the FCC's website through the International Communications Filing System (ICFS) by searching for SCL-MOD-20240515-00013 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 this authorization may also result in monetary sanctions or other enforcement action by the Commission.

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 24-931
Released: September 11, 2024

WIRELINE COMPETITION BUREAU EXTENDS TIME FOR 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 27, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) extends the time for 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] The Bureau sought comment on Arvig and BEVCOMM's filing on August 14, 2024, with comments due on September 13, 2024.[3] In order to provide sufficient time to review the specific locations identified by Arvig and BEVCOMM in support of their claims, the Bureau concludes that an additional 14 days should be provided for comment.

Filing Requirements. Interested parties may file comments on or before **September 27, 2024**. All filings should refer to WC Docket No. 10-90, Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).[4]

- *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

[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] *See 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, Public Notice, DA 24-818 (WCB rel. Aug. 14, 20204).

[4] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (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 & 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.[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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's ex parte rules.

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

- FCC -

[5] *See* 47 CFR §§ 1.1200(a), 1.1206.

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 24-932
Released: September 11, 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 FRANCINE IN MISSISSIPPI

The Federal Communications Commission (Commission) is expanding its disaster data collection to include counties in Mississippi impacted by Hurricane Francine.

On September 11, 2024, the Public Safety and Homeland Security Bureau (PSHSB) of the Commission, in coordination with the State of Louisiana, the Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Emergency Management Agency (FEMA), announced the activation of the Disaster Information Reporting System (DIRS) in response to Hurricane Francine.[1] The State of Mississippi has asked the Commission to expand the data collection to include specified counties in Mississippi with initial reports due on Thursday, September 12, 2024.

ADDITIONAL COUNTIES FOR DIRS ACTIVATION INCLUDE:

Mississippi: Adams, Amite, Forrest, Franklin, George, Greene, Hancock, Harrison, Jackson, Lincoln, Marion, Pearl River, Pike, Stone, and Wilkinson.

DIRS is a voluntary, 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 above 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: FRANCINE. Communications providers are advised that for providers that participate in DIRS, PSHSB hereby waives the separate Network Outage Reporting System (NORS) obligations for the duration of the DIRS activation with respect to outages in the geographic areas where DIRS has been activated. Providers that participate in DIRS remain required,

[1] *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 Hurricane Francine in Louisiana,* Public Notice, DA 24-919 (rel. Sep. 11, 2024) ("*Hurricane Francine DIRS and MDRI Activation PN*").

where applicable, to report incidents in NORS that have reportable effects that fall outside the DIRS activation areas. **Reports are requested at 10:00 a.m. (EDT) on September 12, 2024 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 MISSISSIPPI

With the expansion of the DIRS activation to include counties in Mississippi, 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 Mississippi for which DIRS is activated.[2]

ADDITIONAL COUNTIES FOR MDRI ACTIVATION INCLUDE:

Mississippi: Adams, Amite, Forrest, Franklin, George, Greene, Hancock, Harrison, Jackson, Lincoln, Marion, Pearl River, Pike, Stone, and Wilkinson.

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 Hurricane Francine 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

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[2] *See Hurricane Francine DIRS and MDRI Activation PN* at 1.

[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:

Louisiana: Acadia, Ascension, Assumption, Baton Rouge (East), Baton Rouge (West), Evangeline, Feliciana (East), Feliciana (West), Iberia, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, and Washington.[7]

Please continue to provide information for the impacted areas 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 Francine, please go to www.fcc.gov/Francine.

- FCC -

[7] *See Hurricane Francine DIRS and MDRI Activation PN* at 1.

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

In re Application of	)	
	)	
Ted Austin	)	FRN: 007468671
	)	Facility ID No. 161525
For Renewal of License for	)	Application File No. 0000151593
Station KJNT(AM)	)	
Jackson, Wyoming	)	

ORDER

Adopted: September 12, 2024 **Released: September 12, 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 Ted Austin (Licensee), the licensee for Station KJNT(AM), Jackson, Wyoming (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 73.3526 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 73.3526.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[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. 0000151593 (filed July 2, 2021).

[2] 47 CFR § 73.3526.

[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 Ted Austin, PO Box 83445, 2464 Radio Road, St. Anthony, Idaho, 83445, and to his counsel, Barry D. Wood, Esq., 3300 Fairfax Dr., Suite 202, Arlington, Virginia 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.: 0000151593
	)	
Ted Austin	)	FRN: 0007468671
	)	
Licensee of Station KJNT(AM) Jackson, Wyoming	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Ted Austin (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with section 73.3526 of the Commission's rules,[1] relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

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

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

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

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

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

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

(i) "Licensee" means Ted Austin, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

(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 KJNT(AM), Jackson, Wyoming (Application File No. 0000151593).

[1] 47 CFR § 73.3526.

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

(n) "Stations" means Station KJNT(AM), Jackson, Wyoming.

(o) "Violations" means the Licensee's noncompliance with the Online Public Inspection File Rule.

II. BACKGROUND

3. Section 73.3526 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission's public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee 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 73.3526 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 the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

18. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[5] relating to the matters addressed in this Consent Decree.

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

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

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

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

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

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

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

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

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

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

_____
Albert Shuldiner
Chief, Audio Division

_____September 12, 2024_____
Date

_____
Ted Austin

_____
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

_____
Ted Austin

9/10/24
_____
Date

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

In re Application of	)	
	)	
Jackson Hole Media LLC	)	FRN: 0023959216
	)	Facility ID No. 17436
For Renewal of License for	)	Application File No. 0000151305
Station KCHQ(FM)	)	
Soda Springs, Idaho	)	

ORDER

Adopted: September 12, 2024 **Released: September 12, 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 Jackson Hole Media LLC (Licensee), the licensee for Station KCHQ(FM), Soda Springs, Idaho (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 73.3526 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 73.3526.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[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. 0000151305 (filed June 30, 2021).

[2] 47 CFR § 73.3526.

[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 Jackson Hole Media LLC, c/o Ted Austin, PO Box 17, St. Anthony, Idaho 83445, and to its counsel, Barry D. Wood, Esq., 3300 Fairfax Dr., Suite 202, Arlington, Virginia 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.: 0000151305
	)	
Jackson Hole Media LLC	)	FRN: 0023959216
	)	
Licensee of Station KCHQ(FM) Soda Springs, Idaho	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Jackson Hole Media LLC (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with section 73.3526 of the Commission's rules,[1] relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

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

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

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

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

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

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

(i) "Licensee" means Jackson Hole Media LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

(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 KCHQ(FM), Soda Springs, Idaho (Application File No. 0000151305).

[1] 47 CFR § 73.3526.

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

(n) "Stations" means Station KCHQ(FM), Soda Springs, Idaho.

(o) "Violations" means the Licensee's noncompliance with the Online Public Inspection File Rule.

II. BACKGROUND

3. Section 73.3526 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission's public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee 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 73.3526 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 the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

18. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[5] relating to the matters addressed in this Consent Decree.

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

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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.

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[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

_____September 12, 2024_____
Date

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Ted Austin
Jackson Hole Media LLC

_____
Date

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

_____
Albert Shuldiner
Chief, Audio Division

_____
Date

Ted Austin
Jackson Hole Media LLC

9/10/24
Date

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 24-935
Released: September 12, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF TELEPHONE USA OF WISCONSIN, LLC FROM TELEPHONE USA INVESTMENTS, INC. TO LUMEN TECHNOLOGIES, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-251

Comments Due: September 26, 2024
Reply Comments Due: October 3, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Telephone USA Investments, Inc. (Telephone USA Investments or Transferor) and Lumen Technologies, Inc. (Lumen) (collectively, the 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 approval to transfer control to Lumen the indirect equity interest held by Transferor in the blanket domestic Section 214 authorization held by Telephone USA of Wisconsin, LLC (Licensee).[2]

Telephone USA Investments, a Delaware corporation, holds a 10%s equity interest in TelUSA Holdings, LLC (TelUSA Holdings), the Licensee's direct parent.[3] Telephone USA Investments also holds the rights to appoint two of five seats on TelUSA Holdings' board of directors. Neither Telephone USA Investments nor TelUSA Holdings holds any Section 214 authority.[4]

Lumen, a publicly traded Louisiana corporation, provides broadband and communications services to residential and enterprise customers, including incumbent local exchange services (LEC) through its operating subsidiaries in 17 states,[5] in addition to Licensee's operations as a rural incumbent LEC in Wisconsin, and as a competitive LEC in all 50 states,[6] Lumen holds a 90% equity interest in

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

[2] Application for Transfer of Control of Domestic Section 214 Authorization held by Telephone USA of Wisconsin, LLC from Telephone USA Investments, Inc. to Lumen Technologies Inc., WC Docket No. 24-251 (filed August 16, 2024) (Application). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 1-2, 11, Exh. A.

[4] *Id*. at 2.

[5] These states are: Arizona, California, Colorado, Florida, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id*. at 3 & n.5.

[6] *Id*. at 3.

TelUSA Holdings. Lumen also holds the rights to appoint two of the five seats on TelUSA Holdings' board of directors. The fifth director is appointed by the mutual consent of Transferor and Lumen.[7]

In 1999, Lumen (then known as CenturyTel, Inc.), Telephone USA Investments, and two individual investors purchased assets from affiliates of Verizon Communications, Inc.[8] to form TelUSA Holdings and create the Licensee.[9] The Licensee holds blanket domestic Section 214 authority[10] and serves approximately 25,000-30,000 customers in 35 exchanges in rural Wisconsin.[11]

On February 7, 2024, Telephone USA Investments commenced proceedings under chapter 11 of the Bankruptcy Code.[12] Following Telephone USA Investments' filing for chapter 11 bankruptcy protection, Lumen filed a proof of claim with the bankruptcy court arising from a preexisting commercial dispute related to their co-ownership of TelUSA Holdings and the Licensee.[13] On June 5, 2024, Telephone USA Investments and Lumen participated in a successful mediation of their dispute and reached a settlement.[14] The settlement provides, among other things, that: Telephone USA Investments will transfer to Lumen its shares in TelUSA Holdings; Telephone USA Investments will cause the members of the board of TelUSA Holdings appointed by or on behalf of Telephone USA Investments to resign from the board; and Lumen will pay Telephone USA Investments the sum of $3,500,000 to be distributed pursuant to the terms of the bankruptcy plan.[15] The settlement agreement further obligates Telephone USA Investments to cooperate with, and not interfere with or otherwise obstruct, this Application and other efforts to obtain Commission approval for the transfer of Telephone USA Investments' shares to Lumen, and thus, the transfer of Telephone USA Investments' control of TelUSA Holdings and the Licensee to Lumen.[16]

Applicants seek Commission approval for the transfer of the remaining ownership and control of the Licensee to Lumen, as part of the bankruptcy settlement.[17] Applicants request streamlined treatment of the proposed transaction under the Commission's rules to enable Transferor to exit bankruptcy.[18] Applicants assert that a grant of the application would serve the public interest, convenience, and necessity.[19] We accept the Application for streamlined processing under section 63.03(b)(2)(ii) of the Commission's rules.[20]

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[7] *Id*. at 1.

[8] *Id*. at 4.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 3.

[13] *Id.* at 4.

[14] *Id*.

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

[16] *Id*. at 5.

[17] *Id.* at 2.

[18] *Id.*

[19] *Id*. at 5-6, 12-13.

[20] 47 CFR § 63.03(b)(2)(ii).

Application for Transfer of Control of Domestic Section 214 Authorization Held by Telephone USA of Wisconsin, LLC from Telephone USA Investments, Inc. to Lumen Technologies, Inc., WC Docket No. 24-251 (filed Aug. 16, 2024).

GENERAL INFORMATION

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

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, interested parties must file comments using the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs.

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

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

1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[21] A party or interested person

[21] *See* 47 CFR § 1.45(c).

seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-936
Released: September 12, 2024

FCC ANNOUNCES NEXT MEETING OF THE TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES ON OCTOBER 15, 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 **Tuesday, October 15, 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 discuss progress towards recommendations, and edit a draft Executive Summary. 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. 73651 (Sept. 11, 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, DC 20554

In the Matter of	)	
	)	File No.: EB-IHD-21-00032429
Alliance Global Networks, LLC	)	NAL/Acct. No.: 202232080004
	)	FRN: 0018250241

FORFEITURE ORDER

Adopted: September 13, 2024 **Released: September 13, 2024**

By the Chief, Enforcement Bureau:

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of $16,000 to Alliance Global Networks, LLC (Alliance or Company) for willfully failing to obtain the Federal Communication Commission's (FCC's or Commission's) approval prior to the sale of all of the membership interests in Alliance to Velocity, A Managed Services Company, Inc. (Velocity).

2. On March 3, 2022, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (*NAL*)[1] proposing a $16,000 forfeiture against Alliance for its apparent violation of section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03, 63.04 and 63.24 of the Commission's rules.[2] Specifically, Alliance was wholly owned by an individual named Jess DiPasquale.[3] In 2020, Mr. DiPasquale transferred 100 percent of his membership interests in Alliance to Velocity, including Alliance's domestic and international section 214 authorizations.[4] As a result of the transaction, Alliance became a wholly owned subsidiary of Velocity.[5] Alliance did not seek Commission approval for the transfer of control of its domestic and international 214 authorizations until 2021, almost 15 months after the transaction.[6] The Company did not file a response to the *NAL*.[7] Based on the information before us, we affirm the forfeiture proposed in the *NAL*.[8]

3. 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, Alliance Global Networks, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand dollars ($16,000) for

[1] *All. Glob. Networks, LLC,* Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 2804 (EB 2022) (*NAL*).

[2] *See generally id*.; 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04, 63.24.

[3] *NAL*, 37 FCC Rcd at 2806, para. 5.

[4] *Id*.

[5] *Id.* at 2807, para. 9.

[6] *Id*.

[7] The Bureau ordered Alliance to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture within 30 days of the release date of the *NAL*. *Id.* at 2810, para. 18. The Bureau mailed the *NAL* via First Class Mail and Certified Mail, Return Receipt Requested, and received the signed return receipt. *See* Signed Certified Mail Return Receipt, Lance J.M. Steinhart, Counsel for Alliance Global Networks, LLC (July 13, 2022) (on file in EB-IHD-21-00032429).

[8] *See* 47 CFR § 1.80(g)(4) ("If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an order canceling or reducing the proposed forfeiture or *requiring that it be paid in full and stating the date by which the forfeiture must be paid.*" (emphasis added)).

willfully violating section 214 of the Act, 47 U.S.C. § 214, and sections 63.03, 63.04 and 63.24 of the Commission's rules, 47 CFR §§ 63.03, 63.04, 63.24.

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. Alliance Global Networks, LLC shall send electronic notification of payment to the Enforcement Bureau at IHDTelecom@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 Alliance Global Networks, LLC to pay the proposed forfeiture, it shall notify the Enforcement Bureau at IHDTelecom@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[9]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[10] or printed CORES form[11] 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).[12] 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

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

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

[11] 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.

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

associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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 Alliance Global Networks, LLC, c/o Jess DiPasquale, 606 Post Rd. E., Suite 170, Westport, CT 6880, and Lance J.M. Steinhart, P.C. Attorneys at Law, Counsel for Alliance Global Networks, LLC, 1725 Winward Concourse, Suite 150, Alpharetta, Georgia 30005.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-938
Released: September 12, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES COMMENT DATES FOR ROBOCALL MITIGATION DATABASE NOTICE OF PROPOSED RULEMAKING

WC Docket No. 24-213; MD Docket No. 10-234

Comment Date: October 15, 2024
Reply Comment Date: November 12, 2024

By this Public Notice, the Wireline Competition Bureau announces that comments in response to the *Robocall Mitigation Database Notice of Proposed Rulemaking*[1] are due no later than October 15, 2024, and reply comments are due no later than November 12, 2024.[2]

In the *Notice*, the Commission seeks comment on additional measures to improve the effectiveness of the Robocall Mitigation Database, a critical tool in the Commission's efforts to ensure compliance with its caller ID authentication and robocall mitigation rules and protect the public from harms caused by illegal robocalling campaigns. The *Notice* seeks comment on procedural measures to promote the highest level of diligence when providers submit required information to the Robocall Mitigation Database, technical validation solutions to identify data discrepancies in filings, and accountability measures to ensure and improve the overall quality of submissions in the Robocall Mitigation Database.[3] The *Notice* and the *Federal Register Notice* contain complete comment filing instructions.[4]

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

For further information, please contact Erik Beith, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0756 or Erik.Beith@fcc.gov.

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[1] *Improving the Effectiveness of the Robocall Mitigation Database, Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of the CORES Registration System*, WC Docket No. 24-213, MD Docket No. 10-234, Notice of Proposed Rulemaking, FCC 24-85 (rel. Aug. 8, 2024) (*Robocall Mitigation Database Notice of Proposed Rulemaking* or *Notice*).

[2] The *Notice* requires that comments and reply comments be filed no later than 30 days and 60 days after publication in the Federal Register. *Id*. at 1. On September 12, 2024, the Federal Register published a summary of the *Notice of Proposed Rulemaking*, establishing October 15, 2024, as the deadline for comments and November 12, 2024, as the deadline for reply comments. 89 Fed. Reg. 74184 (Sept. 12, 2024) (*Federal Register Notice*).

[3] *Notice* at 10-24, paras. 14-47.

[4] *See Notice*, para. 55; *Federal Register Notice* at 74184.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-939
Released: September 12, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES LIMITED MODIFICATION OF *EX PARTE* STATUS FOR THE REPORTING ON BORDER GATEWAY PROTOCOL RISK MITIGATION PROGRESS NOTICE OF PROPOSED RULEMAKING

PS Docket Nos. 24-146; 22-90

On June 6, 2024, the Federal Communications Commission (Commission) adopted a *Notice of Proposed Rulemaking* (*Notice*) proposing reporting obligations for providers of broadband Internet access service regarding their efforts to address vulnerabilities threatening the security and integrity of the Border Gateway Protocol (BGP), in particular of their deployment of specific measures that utilize Resource Public Key Infrastructure (RPKI).[1] Under the Commission's rules governing *ex parte* presentations, this proceeding was designated as permit-but-disclose under section 1.1206 of the Commission's rules, 47 CFR § 1.1206. A limited exception was made so as not to require disclosure for presentations by the staff of certain federal agencies working to promote secure Internet routing as part of the National Cybersecurity Strategy.[2]

In furtherance of that Strategy,[3] the Office of the National Cyber Director (ONCD) has recently released a "Roadmap to Enhancing Internet Routing Security" (Roadmap).[4] The Roadmap calls for establishing a joint working group (Internet Routing Security Working Group or IRSWG) of federal government and communications and information technology sector stakeholders to help advance Internet routing security.[5] The Public Safety and Homeland Security Bureau (Bureau) intends that, as it did during preparation of the Roadmap,[6] Commission staff will participate in the Internet Routing Security Working Group in light of the important tasks being undertaken by it to facilitate efforts to secure BGP routing in

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[1] *Reporting on Border Gateway Protocol Risk Mitigation Progress*, PS Docket No. 24-146, Notice of Proposed Rulemaking, FCC 24-62 at 2-3, paras. 2-3 (June 6, 2024) (*Notice*).

[2] *Notice* at 37-38, paras. 108-09; 47 CFR § 1.1200(a); *see* Executive Office of the President, National Cybersecurity Strategy Implementation Plan, version 2 (May 2024), https://www.whitehouse.gov/wp-content/uploads/2024/05/NCSIP-Version-2-FINAL-May-2024.pdf (*NCSIP 2.0*).

[3] *See NCSIP 2.0* at 45.

[4] Executive Office of the President, Roadmap to Enhancing Internet Routing Security (Sept. 3, 2024), https://www.whitehouse.gov/wp-content/uploads/2024/09/Roadmap-to-Enhancing-Internet-Routing-Security.pdf (*ONCD Roadmap*).

[5] *Id.* at 15.

[6] *See id.* at 17.

the Internet.[7] In order to facilitate productive exchange of ideas among the staff of federal agencies and interested stakeholders working toward the important goal of secure Internet routing, by this Public Notice, the Bureau, pursuant to the Commission's rules,[8] announces a limited modification to the *ex parte* rules applicable to this proceeding. Any discussions held and presentations made at meetings of the IRSWG in which Commission staff participates on issues within the scope of this proceeding will be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period.[9]

Although there are clear benefits from Commission staff participation in the Internet Routing Security Working Group, that participation will be limited in light of the ongoing rulemaking proceeding. In particular, Commission staff will not serve as official members of the IRSWG and will abstain from all final consensus decision-making and voting. In addition, the Commission will rely in its decision-making in this proceeding only on facts and arguments that are placed in the public record. To this end, official members of the IRSWG, like all interested parties, should submit in the public record of this proceeding comments, reply comments, and other presentations presenting those facts and arguments on which they wish the Commission to rely in its decision-making process.[10]

For further information, contact George Donato of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at George.Donato@fcc.gov or (202) 418-0729, or Bradley Rosen of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at Bradley.Rosen@fcc.gov or (202) 418-0226.

--FCC--

[7] *Id.* at 15-16.

[8] 47 CFR § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.").

[9] *See generally id.* §§ 1.1203, 1.1206.

[10] *See Notice* at 37-38, paras. 108-09.

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. 24-940

Report No. SAT-01855 **Friday September 13, 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-MPL-20240501-00092 E S3130 AVANTI HYLAS 2 LTD
Modification to PDR/PPL
Grant of Authority Effective Date: 09/12/2024

Nature of Service: Fixed Satellite Service

On April 2, 2024, Avanti Hylas 2 Ltd. underwent a change in ownership following which entities managed by HPS Investment Partners LLC collectively hold 100% of the indirect interests in Avanti.

On August 2, 2024, pursuant to Section 25.137(g) of the Commission's rules, the Satellite Programs and Policy Division sought comment on whether this transaction affects any of the considerations made when the Avanti HYLAS-4 space station was granted U.S. market entry. See Public Notice, Report No. SAT-01842. No comments were filed. After review, the Division has determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-STA-20240801-00167 E S3095 Umbra Lab Inc
Special Temporary Authority
Grant of Authority Effective Date: 09/10/2024

Nature of Service: Earth Exploration Satellite Service

On September 10, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Umbra Lab, Inc., for a period of up to 60 days, to operate the Umbra-05 and Umbra-06 satellites, including for synthetic aperture radar (SAR) imaging in the Earth exploration-satellite service, down to an orbit with a perigee altitude of 325 km.

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

PUBLIC NOTICE

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

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

DA 24-941
Released: September 13, 2024

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 24-218

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 BHN IP Enabled Services, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 24-218 (March 14, 2024), Public Notice, DA 24-803 (WCB August 13, 2024).

Effective Grant Date: September 13, 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).

PUBLIC NOTICE

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DA 24-942
Released: September 13, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF AMELIA TELEPHONE CORPORATION AND NEW CASTLE TELEPHONE COMPANY FROM TDS TELECOMMUNICATIONS, LLC TO RIVERSTREET MANAGEMENT SERVICES, LLC

WC Docket No. 24-185

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by TDS Telecommunications, LLC (TDS Telecom or Transferor) and RiverStreet Management Services, LLC (RiverStreet or Transferee) (collectively, the 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 Amelia Telephone Corporation (Amelia Telephone) and New Castle Telephone Company (New Castle Telephone) (collectively, Licensees) from TDS Telecom to RiverStreet.[2]

On July 3, 2024, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive any comments or petitions in opposition to the Application.

TDS Telecom is a Delaware limited liability company and wholly-owned subsidiary of

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

[2] Application for Consent to Transfer Control of Amelia Telephone Corporation and New Castle Telephone Company from TDS Telecommunications, LLC to RiverStreet Management Services, LLC, Pursuant to Section 214 of the Communications Act of 1934, as amended, WC Docket No. 24-185 (filed June. 24, 2024) (Application). RiverStreet filed a supplement to the application on September 12, 2024. Letter from Michael Bennet, Counsel for RiverStreet Management Services, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-185. (RiverStreet Supplement) (attaching a new version of a map to correct a map attached to the application which inadvertently identified Tri-County Telephone Membership Corporation (Tri-County TMC) as the incumbent LEC provider for SAC 230505 and clarifying that the entity serving SAC 230505 is Wilkes. RiverStreet also informed the Commission that Tri-County TMC was merged into Wilkes in 2018 and thereafter ceased to exist. RiverStreet explained that Tri-County TMC remains the name associated with SAC 230505 and now operates as a division of Wilkes, which keeps the accounting and financials separately for regulatory purposes for SAC 230505. Finally, RiverStreet clarified that Wilkes is currently receiving the CAF-BLS support that Tri-County TMC previously received.). 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 Amelia Telephone Corp. and New Castle Telephone Company from TDS Telecommunications, LLC to RiverStreet Management Services, LLC,* WC Docket No. 24-185, WC Docket No. 24-185, Public Notice, DA 24-639 (WCB 2023) (*TDS Public Notice*).

Telephone and Data Systems, Inc. (TDS), a Delaware corporation.[4] Through its wholly-owned subsidiaries, TDS Telecom delivers high-speed Internet, TV entertainment, and telecommunications services to a mix of small to mid-sized urban, suburban, and rural communities throughout the U.S., as well as offering Voice-over-Internet Protocol (VoIP) advanced communications solutions, dedicated Internet service, data networking, and hosted-managed services to businesses.[5] TDS Telecom directly owns all of the issued and outstanding shares of capital stock of Amelia Telephone and New Castle Telephone, both Virginia corporations.[6] Applicants assert there will be no other 10%-or-greater equity owners (direct or indirect) of Licensees following consummation of the transaction.[7]

Amelia Telephone is an incumbent local exchange carrier (LEC) and designated Eligible Telecommunications Carrier (ETC) providing service in Study Area Code (SAC) 190217 in Virginia. New Castle Telephone is an incumbent LEC and designated ETC providing service in SAC 193029 in Virginia. Both Licensees receive Universal Service Fund high-cost model-based support in the form of Enhanced Alternative Connect America Cost Model (E-ACAM).[8] Licensees also participate in the Lifeline program and Applicants assert they will continue to do so following consummation of the proposed transaction.[9]

RiverStreet is a holding company organized as a North Carolina corporation and a subsidiary of Wilkes Telephone Membership Corporation (Wilkes), a North Carolina corporation[10] owned by its member/subscribers, none of which owns or controls more than ten percent of Wilkes' equity.[11] Applicants assert that RiverStreet began as an extension of Wilkes.[12] RiverStreet is a regulated ETC[13] that, through its affiliates, serves rural portions of North Carolina and Virginia.[14] Wilkes is an incumbent

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[4] Application at 10. TDS is a publicly-traded company listed on the New York Stock Exchange. TDS is controlled by a Voting Trust whose trustees are LeRoy T. Carlson, Jr., Walter C.D. Carlson, Prudence E. Carlson, and Dr. Letitia G.C. Carlson, all siblings and each a U.S. citizen. LeRoy T. Carlson, Jr. is the President of TDS, and Walter C.D. Carlson is its nonexecutive Chairman. As of April 19, 2024, the Voting Trust controls 54.3% of the voting power of TDS's total shares that vote in matters other than the election of directors, and 95.7% of the Series A Common Shares, which elect seven of TDS's eleven directors. Accordingly, the Voting Trust elects a majority of the directors and directs a majority of the combined voting power of TDS in matters other than the election of directors. *Id*.

[5] Application at 2.

[6] TDS Telecom also wholly owns Virginia Telephone Company, a Virginia incumbent LEC. *Id.* at 2 n.2.

[7] *Id.* at 10-11.

[8] *Id*. at 2.

[9] *Id*.

[10] *Id.* at 2. RiverStreet is owned by Wilkes (88.89%), and Eric Cramer (11.11%), a U.S. citizen. *Id*. at 10. The principal business of both Wilkes and Cramer is telecommunications. *Id*. at 11.

[11] *Id*. at 3.

[12] *Id*. at 6.

[13] *Id*. at 3.

[14] *Id*. at 6. RiverStreet wholly owns the following telecommunications providers: Barnardsville Telephone Company (Barnardsville), an incumbent LEC providing service in SAC 230469 in North Carolina receiving E-ACAM support; Saluda Mountain Telephone Company (Saluda), an incumbent LEC providing service in SAC 230498 in North Carolina receiving model-based E-ACAM support; Service Telephone Company (STC), an incumbent LEC providing service in SAC 230500 in North Carolina receiving model-based E-ACAM support; Ellerbe Telephone Company (Ellerbe), an incumbent LEC providing service in SAC 230478 in North Carolina

LEC and ETC providing service in SAC 230510 in North Carolina.[15] Wilkes receives model-based support in the form of E-ACAM.[16] Wilkes also provides service in SAC 230505 in North Carolina, an area formerly served by Tri-County Telephone Membership Corporation (Tri-County TMC), an incumbent LEC which received cost-based CAF-BLS support.[17] Wilkes is currently receiving the CAF-BLS support that Tri-County TMC previously received.[18]

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receiving model-based E-ACAM support; Electronics Service Co. of Hamlet, Inc. (ESC), a wireless Internet service provider (WISP) providing service in rural areas of southeastern North Carolina and northeastern South Carolina; RiverStreet Communications of North Carolina (RSNC), a competitive LEC providing service in SAC 239033 in North Carolina receiving model-based RDOF support; RiverStreet Wireless of North Carolina (RSWNC), a wireless Internet service provider (WISP) providing service in North Carolina and holder of common carrier industrial microwave and CBRS licenses; RiverStreet Communications of Virginia, Inc. (RSVA), a competitive LEC providing service in SAC 19024 in the Virginia counties of Bedford, Brunswick, Campbell, Charlotte, King and Queen, and Pittsylvania receiving model-based CAF II and RDOF support, and providing other unregulated services in certain Virginia counties; RSVA serves internet subscribers in the Virginia counties of Pittsylvania, Campbell, Bedford, Franklin, Halifax, Charlotte, Prince Edward, King and Queen, Caroline, Essex, Middlesex, King William, Nelson, Albemarle, City of Danville, Charles City County, City of Emporia (Greenville County), City of South Boston (Halifax), and City of Martinsville (Henry). RiverStreet Wireless of Virginia, Inc. (RSWVA), a WISP provider in the Virginia counties of Pittsylvania, Henry, Amelia, Dinwiddie, Louisa, Bedford, Botetourt, Amherst, Nelson, Albemarle, Augusta, Spotsylvania, and Charles City holding private industrial microwave and CMRS licenses; Peoples Mutual Telephone Company (Peoples), an incumbent LEC providing service in in SAC 190244 in Virginia receiving model-based RDOF support. *Id*. at 3-4. RiverStreet owns 50% of NCRBN, LLC (NCRBN), an Internet service provider operating in North Carolina. The other 50% is held by RiverStreet Networks, Inc., a holding company wholly owned by RiverStreet. *Id.* at 4.

[15] Application at 2-3. Wilkes owns 100% of Wilkes Communications, Inc. (WCI), a competitive LEC providing service in SAC 239032 in North Carolina receiving model-based RDOF support. *Id*. at 5. Wilkes owns 100% of Tri-County Communications, Inc. (TCI), a competitive LEC providing service in SAC 230505 in North Carolina. *Id*. Wilkes holds a 44% interest in Response Technology Partners, Inc., a managed service provider and VoIP reseller providing service in Florida, Georgia, North Carolina, and Virginia. *Id*. Wilkes holds a 23.05% interest in Visions West, LLC, and IPTV headend service provider providing service in North Carolina. *Id*.

[16] *Id*. at 3.

[17] *See* RiverStreet Supplement (including attached corrected map depicting respective service area). Tri-County TMC was acquired by and merged into RiverStreet/Wilkes in 2018. *Id*. *See also Domestic Section 214 Applications Granted Subject to Condition,* WC Docket Nos. 17-101, 17-365, 18-68, 18-94, 18-95, 18-177, DA 18-742 (WCB 2018).

[18] *See* RiverStreet Supplement. When Tri-County TMC sought approval to be acquired by RiverStreet/Wilkes, the applicants requested approval to consummate a transaction involving companies that receive high-cost universal service support under the different mechanisms of fixed model-based support and cost-based support, and accordingly granted consent subject to compliance with the *Hargray/ComSouth* condition. *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket No. 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). In the *Hargray/ComSouth Order*, the Commission found that "the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed efficiently and effectively" as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *Id*. at para. 20. The Commission therefore found that mixed support transactions warrant a safeguard to protect the financial stability of high-cost universal service support as a finite resource and directed the Bureau to impose a limited condition on transactions between parties receiving different types of support to cap high-cost universal service support based on the operating expenses of the cost-based companies. *Id*. Accordingly, to mitigate the potential for cost shifting, the application was granted subject to the following condition, as established in the *Hargray/ComSouth Order*: the combined operating expense for each post-

Pursuant to the terms of the stock purchase agreement, RiverStreet will purchase all of the issued and outstanding capital stock of Amelia Telephone and New Castle Telephone, which would give RiverStreet control of those companies.[19] Applicants assert that after consummation of the proposed transaction Amelia Telephone and New Castle Telephone will continue to exist and operate pursuant to their respective section 214 authorizations.[20]

Applicants assert there is no overlap in the service area of any RiverStreet affiliate with the service areas of Amelia Telephone and New Castle Telephone.[21] Applicants aver that consummation of the transaction will not reduce competition in the relevant market as it will only change the control of Amelia Telephone and New Castle Telephone; it will not remove an actual or potential competitor from the market nor will it have an adverse impact on the ability of other providers to enter or compete in the market; and it will not have an adverse impact on the Universal Service Fund.[22] Accordingly, Applicants affirm that the proposed transaction is consistent with the public interest, convenience, and necessity.[23]

We find that grant of the Application, subject to Applicants' continuing compliance with the *Hargray/ComSouth* condition, will serve the public interest, convenience, and necessity.[24] 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,[25] subject to RiverStreet's compliance with the condition described above.[26]

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 application 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 Randall Sifers, Wireline Competition Bureau,

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consummation company's rate-of-return affiliates shall be capped at the averaged combined operating expense of the three calendar years preceding the transaction closing date for which operating expense data are available. *Id*. at para 27.

[19] Application at 2.

[20] *Id.* at 6.

[21] *Id.* at 5, 14.

[22] *Id*. at 6.

[23] Application at 6-7. Following consummation of the proposed transaction, Amelia Telephone and New Castle Telephone, which are recipients of model-based universal service support, will be affiliated with companies through RiverStreet that receive universal service support under the different mechanisms of fixed model-based support and cost-based support. Similar to other transactions involving affiliates that receive universal support under the different mechanisms of fixed model-based support and cost-based support, to mitigate the potential for cost shifting, we grant the Application subject to the continued application of the *Hargray/ComSouth* condition to the applicants.

[24] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

[25] We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.

[26] We direct the applicants to submit, in the domestic section 214 docket, WC Docket No. 24-185, a notice that the proposed transaction has closed with the consummation date, and also provide a courtesy copy of the notice to hcinfor@usac.org.

Competition Policy Division, Randall.Sifers@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

DA 24-944
Released: September 13, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF NEMONT TELEPHONE COOPERATIVE, INC. AND MISSOURI VALLEY COMMUNICATIONS, INC. BY NORTHWEST COMMUNICATIONS COOPERATIVE, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-268

Comments Due: September 27, 2024
Reply Comment Due: October 4, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Nemont Telephone Cooperative, Inc. (Nemont) and its subsidiary, Missouri Valley Communications, Inc. (MVC) (together Transferors) and Northwest Communications Cooperative, Inc. (NCC or Transferee) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the transfer of Study Area Code 382247 (Study Area) located in North Dakota from Transferors to NCC.[2]

Nemont, a Montana cooperative association, provides services as a rural cooperative incumbent local exchange carrier (LEC).[3] Nemont offers local telecommunications services and high-speed Internet access services that serve Division 1of the Study Area – the portion of the Study Area that includes customers served by the Ambrose, Fortuna, and East Westby Exchanges.[4]

MVC, a North Dakota corporation, is a wholly-owned subsidiary of Nemont that provides services as a rural incumbent LEC corporation.[5] MVC offer local telecommunications and high-speed

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

[2] *See* Domestic Section 214 Application for Acquisition of Certain Assets of Nemont Telephone Cooperative, Inc. and its Subsidiary Missouri Valley Communications, Inc. to Northwest Communications Cooperative, Inc., WC Docket No. 24- (filed Aug. 27, 2024) (Application). Applicants state that they also filed an application for the transfer of international authorizations. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 2, 3.

[4] *Id.* at 4, 8.

[5] *Id.* at 2, 3.

Internet access services that serve Division 2 – the portion of the Study Area that includes customers served by the Williston Exchange.[6]

NCC, is a North Dakota cooperative association, provides services as a rural incumbent LEC.[7] NCC offers local telecommunications services and high-speed Internet access services over an all-fiber communications network to its entire study area, which includes the exchanges of Alamo, Bowbells, Columbus, Crosby, Epping, Flaxton, Grenora, Lignite, Marmon, McGregor, Noonan, Portal, Powers Lake, Ray, Round Prairie, Tioga, and Wildrose, in the state of North Dakota.[8] NCC is owned by its member-subscribers, with no individual holding more than 10% of the equity interest in NCC.[9] NCC's Board of Directors controls NCC, and all of the Board members are U.S. citizens.[10]

Pursuant to the terms of the proposed transaction, NCC would acquire all assets, property, rights, and interest from Transferors to provide voice and internet services to customers in the telecommunications and broadband network exchanges and local exchange telephony located within the Study Area.[11] The Study Area is comprised of two "divisions."[12] One division (Division 1) is owned and operated by Nemont and provides voice and internet services to customers in and around the communities of Ambrose, Fortuna, and East Westby (the Ambrose, Fortuna, and East Westby Exchanges) while the second division (Division 2) is owned and operated by MVC and provides voice and internet services to customers in and around the communities of Williston and Trenton (the Williston Exchange).[13] The result of the proposed transaction would be that the Study Area will become part of NCC's service area and will provide services to customers in the Study Area.[14]

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity by ensuring that rural North Dakota residents and businesses in the Study Area will receive enhancements and upgrades to telecommunications and broadband services as efficiently and timely as possible.[15] The Applicants state that the transaction will be seamless for consumers for the services offered as NCC will continue to provide and enhance the telecommunications and high-speed Internet access currently offers.[16] Applicants further state that Nemont's customers "will not experience any immediate change to rates, terms, or conditions of service, and in no event will the transaction result in the interruption, reduction, loss, or impairment of service."[17] Applicants assert that the proposed

[6] *Id.* at 8.

[7] *Id.* at 2, 6.

[8] *Id.* at 2, 8.

[9] *Id.* at 6.

[10] *Id.*

[11] *Id.* at 2, 7.

[12] *Id.* at 1.

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

[14] *Id*. at 7.

[15] *Id.* at 10.

[16] *Id*. at 2, 10.

[17] *Id.* at 10.

transaction will also have no adverse effects on competition in the Study Area since there is no overlap between the Applicants' service areas.[18]

Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[19]

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Nemont Telephone Cooperative, Inc. and Missouri Valley Communications, Inc. by Northwest Communications Cooperative, Inc., WC Docket No. 24-268 (filed Aug. 27, 2024).

GENERAL INFORMATION

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

Interested parties may file comments 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.

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

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

1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
2) David Krech, Office of International Affairs, david.krech@fcc.gov; and

[18] *Id*. at 11.

[19] 47 CFR § 63.03(c)(1)(v).

3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[20] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at dennis.johnson@fcc.gov.

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[20] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: www.fcc.gov
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DA 24-945
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APPLICATIONS OF T-MOBILE LICENSE LLC AND HORRY TELEPHONE COOPERATIVE FOR LICENSE ASSIGNMENTS

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. 0010864059
ULS File No. 0010877919
ULS File No. 0010902770

In connection with the Commission's review of an application for a license assignment from Horry Telephone Cooperative (HTC) to T-Mobile License LLC (T-Mobile) and applications for exchange license assignments between T-Mobile and HTC (collectively, the Applicants), the Commission is examining information contained in the biannual Numbering Resource Utilization and Forecast (NRUF) reports filed by wireless telecommunications carriers,[1] carrier-specific local number portability (LNP) data related to wireless telecommunications carriers, and further disaggregated monthly carrier-specific local number portability data (Carrier-to-Carrier LNP Data) related to wireless telecommunications carriers. These data may assist the Commission in assessing the competitive effects of the transaction. Accordingly, the NRUF reports for all wireless telecommunications carriers for December 2023 and the monthly LNP reports for all wireless telecommunications carriers for January 2023 through December 2023 are being placed in the record in these proceedings, subject to the provisions of a protective order.[2]

Section 251 of the Communications Act grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[3] To monitor better the way numbering resources are used within the NANP and allocate NANP resources efficiently, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.[4] LNP data are collected by the LNP Administrator and provided to the Commission.

The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C. § 552(b)(4).[5] The NRUF and LNP reports are being placed into the record subject to the provisions of a

[1] 47 CFR §§ 1.907, 52.5.

[2] A protective order will be adopted shortly.

[3] 47 U.S.C. § 251.

[4] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7578-79, para. 5 (2000) (*Numbering Report and Order*).

[5] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

protective order. As such, the NRUF and LNP data will not be available to the public except pursuant to the terms of the protective order, as outlined below.

Persons seeking to review the NRUF and LNP data may do so only for purposes of participating in this proceeding. Pursuant to the protective order, outside persons participating or intending to participate in the proceeding who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the protective order may review the NRUF and LNP data. We emphasize that persons seeking to review the NRUF and LNP data must have adequate protections in place to prevent improper use or disclosure of the information.

Affected parties have until **September 23, 2024** to oppose the limited disclosure of their NRUF and LNP data pursuant to the protective order.[6] In addition, affected parties will have five business days after the filing of an acknowledgment of confidentiality to object to the release of their data to a particular person who requests permission to review it.

Under the Commission's current procedures for the submission of filings and other documents,[7] submissions in this matter may be filed electronically through the Commission's Universal Licensing System (ULS), referencing the file numbers set forth above.

- Electronic Filers: Comments may be filed electronically using the internet by accessing ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. **All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission**.
  - 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, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, D.C. 20554.

One copy of each filing must be delivered electronically, by email, or if delivered as paper copy, by messenger delivery, commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Susannah Larson, Wireless Telecommunications Bureau, at Susannah.Larson@fcc.gov; (2) Catherine Matraves, Office of Economics and Analytics, at Catherine.Matraves@fcc.gov; and (3) Joel Rabinovitz, Office of General Counsel, at Joel.Rabinovitz@fcc.gov. Any submission emailed to these individuals should include in the subject line of the email, for example: (1) ULS File No. 0010864059; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., ULS File No. 0010864059, Widget Corp., NRUF Objection).

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

This action is taken pursuant to sections 4(i) and 310(d) of the Communications Act, 47 U.S.C. §§ 154(i), 310(d), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority

[6] If disclosure is opposed, the procedures set forth in 47 CFR § 0.461(i) shall apply.

[7] *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

For further information regarding this proceeding, please contact Susannah Larson, Susannah.Larson@fcc.gov; Catherine Matraves, Catherine.Matraves@fcc.gov; or Joel Rabinovitz, Joel.Rabinovitz@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

DA 24-946
Released: September 13, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ACQUISITION OF CERTAIN ASSETS OF COMPUTER 5 INC. DBA LOCALTEL COMMUNICATIONS TO NORTHWEST FIBER, LLC, ZIPLY FIBER NORTHWEST, LLC, AND ZIPLY WIRELESS, LLC

WC Docket No. 24-87

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Computer 5 Inc. dba LocalTel Communications (LocalTel), Northwest Fiber, LLC (NWF), Ziply Fiber Northwest, LLC (ZFN), and Ziply Wireless, LLC (Ziply Wireless), (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the transfer of substantially all of the assets of LocalTel (transferring assets) to NWF, and ultimately, in part to ZFN and in part to Ziply Wireless.[2] In connection with this application, we also address the conditional authorization of ZFN to receive Rural Digital Opportunity Fund (RDOF) support and of Ziply Wireless to receive Connect America Fund Phase II Auction (CAF Phase II) support associated with this transaction.

On June 28, 2024, 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.

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

[2] Joint Application Domestic Section 214 Authorization For the Consent to Assign Certain Assets of Computer 5 Inc. dba LocalTel Communications to Northwest Fiber, LLC, Ziply Fiber Northwest, LLC and Ziply Wireless, LLC, WC Docket No. 24-87 (filed on Mar. 14, 2024) (Application). Applicants filed supplements to their application on April 15, 2024, May 7, 2024, and June 18, 2024, September 9, 2024. Letter from Stephen E. Coran, Counsel for Computer 5, Inc. dba LocalTel Communications, and Michael P. Donahue and Byron E. Springer, Jr., Counsel for Northwest Fiber, LLC, Ziply Fiber Northwest, LLC, and Ziply Wireless LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-87 (filed Apr. 15, 2024) (Apr. 15 Supplement); Letter from Michael P. Donahue and Byron E. Springer, Jr., Counsel for Northwest Fiber, LLC, Ziply Fiber Northwest, LLC, and Ziply Wireless LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-87 (filed May 7, 2024) (May 7 Supplement) (informing the Commission of a pro forma transfer that resulted in the insertion of two new intermediate holding companies in ZFN's ownership structure and confirming USF commitments); Letter from Michael P. Donahue and Byron E. Springer, Jr., Counsel for Northwest Fiber, LLC, Ziply Fiber Northwest, LLC, and Ziply Wireless LLC, to Marlene H.-87 (filed Sept. 9, 2024) (Sept. 9 Supplement). Applicants also filed applications for the transfer of international authorizations. Any action on this application is without prejudice to other pending applications before the Commission.

[3] *See Domestic Section 214 Application Filed for the Acquisition of Computer 5 Inc. DBA LocalTel Communications to Northwest, LLC, and Ziply Wireless, LLC*, WC Docket No. 24-87, Public Notice, DA 24-623 (WCB June 28, 2024).

Applicants and Description of Transaction

LocalTel, a Washington corporation, provides voice and broadband service to more than 40,000 residences and businesses in rural communities and urban areas throughout Eastern Washington state using fixed wireless and fiber-to-the-home technologies.[4] LocalTel is designated as an eligible telecommunications carrier (ETC) in Washington and is authorized to receive $6,847,092.40 in CAF Phase II support to deploy voice and broadband service to 1,910 eligible locations in Washington.[5] In addition, LocalTel is authorized to receive $48,818,171.30 in RDOF support to deploy voice and broadband service to 12,530 locations in Washington.[6] LocalTel also participates in the Lifeline program.[7]

NWF, a Delaware limited liability company, was created in connection with a transaction for the purchase of certain subsidiaries from Frontier Communications Corporation (Frontier), which closed on May 1, 2020, with operations in Washington, Oregon, Idaho, and Montana.[8] NWF has continuously operated these subsidiaries since closing the Frontier transaction.[9] NWF and its operating affiliates use the trade name "Ziply Fiber."[10]

ZFN, a Delaware limited liability company, is a wholly-owned subsidiary of NWF.[11] ZFN provides service as the incumbent local exchange carrier (LEC) in all of the areas it currently serves in Washington, Oregon, and Idaho, and provides data, video (in limited areas in Western Washington and Northwestern Oregon), and voice services.[12] ZFN is designated as an ETC in Idaho, Oregon, and Washington.[13] ZFN is authorized to receive $20,066,009.70 in RDOF support to deploy voice and broadband services to 9,370 locations in Washington.[14] ZFN participates in the Lifeline program.[15] Ziply

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[4] Application at 2-3.

[5] *Id*. at 3. *Connect America Fund Phase II Support Authorized for 387 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 9406, Attach. A, pp. 3-6 (AU/WCB 2019).

[6] *Id*. *Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket No. 20-34, WC Docket No. 19-126 and WC Docket No. 10-90, Public Notice, 37 FCC Rcd 3570, Attach. A, pp. 270-272 (AU/WCB 2022) (*RDOF Seventh Authorization Public Notice*). We note that the Bureau has been directed to adopt revised location obligations no later than the end of program's sixth year using a listing of all qualifying locations within eligible areas *See Rural Digital Opportunity Fund; Connect America Fund*, WC Dockets 19-126, 10-90, Order, 35 FCC Rcd 686, 709, para. 45 (2020).

[7] Application at 14. LocalTel had participated in the Affordable Connectivity Program (ACP). Press Release, FCC, *The FCC Brings the Affordable Connectivity Program to a Close* (May 31, 2024) https://docs.fcc.gov/public/attachments/DOC-402930A1.pdf, (due to a lack of additional Congressional funding, the agency officially ended the ACP on June 1, 2024).

[8] Application at 4.

[9] *Id.*

[10] *Id.*

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

[12] *Id*. at 5.

[13] *Id.* at 14. September 9 Supplement at 1 (stating that on July 25, 2024, ZFN received expanded ETC designation in Washington to include the areas covered by LocalTel's RDOF award and that Ziply Wireless received ETC designation in Washington for the areas covered by LocalTel's CAF II award); *id*. at Exh. A at p. 8 (attached copies of orders of Washington Utilities and Transportation Commission granting ZFN expanded designation and Ziply Wireless ETC designation).

[14] Application at 5. *RDOF Seventh Authorization Public Notice*, 37 FCC Rcd 3570, Attach. A, pp. 254-61.

[15] Application at 14.

Wireless, a Delaware limited liability company, is a wholly-owned subsidiary of NWF.[16] Ziply Wireless provides service as a competitive LEC in Idaho, Oregon, and Washington.[17] Ziply Wireless provides voice and data services over a fixed wireless access network in Washington and Oregon.[18] ZFN is indirectly held by NWF, which is indirectly held, through a number of U.S. and Cayman Islands holding companies and funds, by Searchlight Capital Partners II GP, LLC (Upper GP), a Delaware limited partnership (collectively, Searchlight).[19] Applicants state that Upper GP is the "ultimate controlling entity of the Searchlight funds" and holds a 100% voting interest in ZFN.[20] Upper GP is ultimately controlled by Eric Zinterhofer (a U.S. citizen), Erol Uzumeri (a Canadian citizen), and Oliver Haarmann (a German citizen), each holding a 33 1/3% ownership interest in Searchlight Capital Partners II and a 26.27% indirect voting interest in ZFN.[21] Steve Weed indirectly holds 10% of the voting and equity interests of NWF, ZFN, and Ziply Wireless.[22] The following entities also ultimately hold a 10% or greater indirect interest in ZFN: The Public Sector Pension Board (Canada) (28.68% equity interest in ZFN); Canada Pension Plan Investment Board (Canada) (17.81% indirect equity interest in ZFN); and the British Columbia Investment Management Corporation (Canada) (17.93% indirect equity interest in ZFN).

Pursuant to the terms of the Asset Purchase Agreement and Plan of Merger between LocalTel and its controlling shareholder and principal (Selling Parties) and NWF and ZFN, NWF agreed to purchase, and LocalTel agreed to sell, "various rights, property, and assets (including all customer contracts and customer relationships) used in or necessary for the business of providing, for consumer and commercial use, broadband and voice services, including high-speed internet, transport, transit, voice, data, and other telecommunications services, throughout LocalTel's service territory over a leased fiber-based network infrastructure, together with services resold off of copper-based networks of local ILECs."[23] The Selling Parties and Ziply Wireless also entered into an Asset Purchase Agreement, whereby Ziply Wireless agreed to purchase, and the Selling Parties agreed to transfer, the wireless licenses and other assets, including customers, associated with LocalTel's fixed wireless business.[24] Applicants state that following the two-part transaction, NWF will transfer all fiber and related assets and operating obligations to its wholly-owned subsidiary, ZFN.[25]

Applicants state that pursuant to these transactions, LocalTel's CAF Phase II and RDOF assets, unused CAF II and RDOF support and future CAF Phase II and RDOF support, will ultimately transfer to two separate NWF subsidiaries, ZFN and Ziply Wireless.[26] Applicants state that ZFN will acquire all of the LocalTel RDOF-related assets and assume all related obligations, and Ziply Wireless will acquire all

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

[17] *Id.* at 6.

[18] *Id.*

[19] *Id*. at 3; June 18 Supplement at 7-9. Applicants state that Searchlight has investment interests in other broadband providers operating in multiple states, including a 13.9% interest in Consolidated Communications Holdings, Inc., a 22.6% interest in Northwest Fiber, LLC d/b/a Ziply Fiber, and a 2.9% interest in Uniti Group Inc., all of which either receive, or have received, Universal Service Fund support. *See* Application at 3-4 and n.6; Apr. 15 Supplement at 2-4. According to the Applicants, Searchlight also has investment interests in GCI Communications, Inc. and Electric Lightwave. *See* Application at 3-4 and n.6.

[20] June 18 Supplement at 7-9.

[21] Application at 3-4; June 18 Supplement at 1.

[22] Application at 19; June 18 Supplement at 3-4.

[23] Application at 6-7.

[24] *Id.* at 7.

[25] *Id*. at 8.

[26] *Id*. at 7.

CAF Phase II-related assets and assume all associated obligations.[27] ZFN will combine the support and obligations of its preexisting RDOF-supported area in Washington and its newly acquired RDOF-supported areas. ZFN and Ziply Wireless separately commit to meeting the deployment milestones and performance requirements associated with the type of support that each affiliate will receive.[28]

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.[29] We then employ a balancing test that weighs any potential public interest harms of the proposed transaction against any potential public interest benefits.[30] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[31]

We find that the record contains no evidence of any potential public interest harms. First, the proposed transaction will not result in a significant reduction of competition. Applicants contend that "the operations and networks of LocalTel, ZFN and Ziply Wireless are complimentary and adjacent with minimal overlap and multiple, larger competitors provide similar service in the LocalTel, ZFN and Ziply Wireless service areas."[32] Applicants state that the proposed transaction will be completed in a manner that is "seamless and transparent" to customers, because they will continue to receive their services over the same network and "services will continue to be implemented by existing LocalTel management and employees."[33] Moreover, Applicants attest that "existing customers' rates, terms, and conditions of service will not change absent compliance with customers' contracts, tariffs, and applicable law."[34]

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[27] *Id*.

[28] *Id*. at 8-9; *see also* May 7 Supplement at 9 ("NWF, ZFN and Ziply Wireless confirm their commitment to fulfill all their existing and acquired Lifeline, CAF, RDOF and other USF obligations after closing.").

[29] *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, 16996, 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*)).

[30] *See Verizon-TracFone Order*, 36 FCC Rcd at 16996, 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).

[31] *See Verizon-TracFone Order*, 36 FCC Rcd at 16996, 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).

[32] Application at 11, 12; April 15 Supplement at 4-7 (attesting that competitors will remain in overlap areas post-consummation).

[33] *Id*.

[34] *Id*.

Second, NWF, through its relevant affiliates, will remain financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of CAF Phase II and RDOF funding, and we expect that the proposed transaction will not negatively impact these obligations.[35] Applicants state that "neither NWF nor Ziply plan to make material changes to LocalTel's CAF II and RDOF deployment technologies or network architecture."[36] Applicants state that "ZFN's and Ziply Wireless's operations will be overseen and directed by the NWF management team, which together have extensive technical, organizational, regulatory, and management experience in building and operating residential and business next-generation fiber networks and meeting high-cost support obligations."[37] Applicants have demonstrated that NWF, ZFN, and Ziply Wireless are sufficiently experienced enough to ensure that ZFN and Ziply Wireless will meet all of their respective high cost obligations.[38] Finally, Applicants assert that they are financially qualified to meet the transferring CAF Phase II and RDOF obligations, and that ZFN "will not be assuming any debt in connection with the transaction."[39] 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.[40] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[41] 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.[42]

Applicants argue that, because of their proximity, by managing the transferring assets in LocalTel's RDOF supported area and NWF's existing RDOF supported service area as a single project, "NWF can achieve economies of scale and leverage its labor force, infrastructure, and operational capabilities to rapidly and cost-effectively build out the combined areas as it expands its broadband operations."[43] Applicants state, for example, that NWF, through its subsidiaries, "already provides fiber broadband service to many of the areas adjacent to where LocalTel has RDOF deployment obligations."[44] Further, Applicants contend that "the majority of LocalTel's customers served via its copper-based services are on the ZFN network" and that combining the networks will "reduce the costs of providing these services."[45] Indeed, Applicants assert that "ZFN is managing its RDOF obligation as a statewide project and has determined that LocalTel's RDOF areas might be served in a more expeditious and cost-effective manner utilizing LocalTel's assets and NWF's existing fiber plant, operations, resources, and infrastructure.[46] Thus, Applicants contend that the proposed transaction will benefit consumers by

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[35] *See id*. at 8-11; May 7 Supplement at 9.

[36] Application at 11. Applicants further state that "Assignees currently plan to rely on the network design, architecture, technology and equipment, and engineering and other assumptions described in LocalTel's CAF II and RDOF Long-Form Applications." September 9 Supplement at 2.

[37] *Id*. at 11.

[38] *Id*. at 8-11.

[39] *Id*. at 11, 14. *Id*. at 10 (Applicants state that NWF and its investors will provide financial backing to the management team overseeing deployment in supported areas).

[40] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[41] *See id*. at 9237-38, paras. 275-76.

[42] *See id*.

[43] Application at 11.

[44] *Id*.

[45] *Id*. at 12.

[46] *Id*. at 11.

"lowering the costs of deployment through the economies of scale gained through a comprehensive CAF II and RDOF deployment instead of the patchwork that currently exists" and that as a result, ZFN "can keep consumer costs competitive."[47] Moreover, Applicants contend that the efficiencies and cost savings from the proposed transaction will also benefit consumers by resulting in a stronger competitor to larger providers.[48]

The Commission has specified that a transaction ensuring consumers receive new or additional services is an important public interest factor,[49] and accelerating private sector deployment of advanced services is one of the aims of the Act.[50] In light of ZFN's and Ziply Wireless's commitments to meet all of LocalTel's federal high cost funding obligations for the transferring assets[51] and the fact that the transaction is likely to result in a stronger competitor to larger providers,[52] 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.[53]

Conditional Authorization of CAF Phase II Support

As stated above, we have found that both ZFN and Ziply Wireless (responsible affiliates) have demonstrated their respective managerial, financial, and technological capabilities to assume the responsibilities and obligations of the type of support that they are acquiring pursuant to this transaction. Accordingly, we conditionally authorize ZFN to receive the RDOF support to be transferred to it as part of this transaction and Ziply Wireless to receive the CAF Phase II support to be transferred to it as part of this transaction. These authorizations are conditioned upon each of the responsible affiliates separate satisfaction of the following prerequisites within three months of the release date of this Public Notice:

1) submission and approval of an irrevocable letter of credit (LOC) securing the requisite amount of support; 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. 24-87 and WC Docket No. 10-90. Applicants should also email a copy of this Public Notive directly to Dennis Johnson at dennis.johnson@fcc.gov and to Nissa Laughner at nissa.laughner@fcc.gov. NWF, or its subsidiaries, should submit the LOC and the supporting

[47] *Id*. at 13.

[48] *Id*. at 12.

[49] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[50] *See Verizon-TracFone Order*, 36 FCC Rcd at 16996-97, 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")).

[51] Application at 8-9; May 7 Supplement at 9; September 9 Supplement at 1-2.

[52] Application at 11-12.

[53] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03. Applicants note that LocalTel and ZFN have overlapping service areas, including in areas where ZFN provides service as the incumbent LEC. Application at 11, Exhibit B (Service Area Map); April 15 Supplement at 4-7. We conclude that there will be efficiencies that result from these overlapping service areas and find the proposed transaction is in the public interest. *See* 47 U.S.C. § 214(a); 47 CFR § 63.03. *See, e.g., Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in CenturyLink's incumbent LEC territory, nor outside of CenturyLink's incumbent LEC territory, where applicants operate as competitive LECs, and further finding that the transaction "will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC.").

Bankruptcy Opinion Letter directly to USAC for review and approval.

If and when each of the responsible affiliates satisfies all of these prerequisites, that affiliate will be separately authorized to receive the relevant type of support.[54] Once that affiliate is authorized, USAC will transfer all associated future support payments (and any withheld payments), as of the next month following the authorization or as soon as reasonably practical thereafter. The Bureau will announce the date that the authorization became effective in a monthly release. Until a responsible affiliate is authorized, LocalTel must maintain the irrevocable LOC for that support and will retain sole responsibility for complying with the universal service fund requirements for the supported area. All support and assets associated with the supported area must be transferred from LocalTel to the relevant authorized affiliate, including any support disbursements received by LocalTel, as of the effective date of the authorization.

We remind each of the responsible affiliates that once it satisfies all conditions of authorization, it assumes sole responsibility for complying with universal service fund requirements and Commission rules applicable to the type of support it receives, 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.[55] 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.[56] Finally, each of the responsible affiliates 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.[57]

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.[58]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.[59] 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

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[54] If Applicants 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. 24-87 and 10-90. If either of the responsible affiliates does not meet one or more of the conditions before the three month period specified above expires, the Bureau will reassess that affiliate's qualifications for authorization.

[55] *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).

[56] *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.").

[57] September 9 Supplement at 1-2.

[58] *See CAF Phase II Public Notice*, 34 FCC Rcd at 4726-30 (listing obligations of CAF Phase II authorized support recipients); *RDOF Public Notice* at 1-9 (listing obligations of RDOF authorized support recipients).

[59] We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 24-87 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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

In the Matter of	)	
	)	
Application of T-Mobile License LLC and Horry Telephone Cooperative, Inc. to Assign Spectrum Licenses	)	ULS File No. 0010864059
	)	
Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses	)	ULS File No. 0010877919
	)	
Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses	)	ULS File No. 0010902770

NRUF/LNP PROTECTIVE ORDER

Adopted: September 13, 2024 **Released: September 13, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In connection with the Commission's review of the transactions at issue in this proceeding, the Commission is examining information contained in the Numbering Resource Utilization and Forecast (NRUF) reports filed by carriers engaged in the provision of wireless telecommunications services[1] (Wireless Telecommunications Carriers) and disaggregated, carrier-specific local number portability (LNP) data related to Wireless Telecommunications Carriers. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision. We also anticipate that parties participating in the proceeding may seek to review this data.

2. Section 251 of the Communications Act of 1934, as amended, grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[2] In order to better monitor the way numbering resources are used within the NANP and efficiently allocate NANP resources, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements—the NRUF report.[3] LNP data are collected by the LNP Administrator and provided to the Commission. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4).[4]

3. While we are mindful of the highly sensitive nature of such information, we are also mindful of the right of the public to participate in this proceeding in a meaningful way. Therefore,

[1] 47 CFR §§ 1.907, 52.5.

[2] 47 U.S.C. § 251.

[3] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7578-79, para. 5 (2000) (*Numbering Report and Order*).

[4] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

consistent with past practice,[5] the NRUF reports and LNP data will not be available to the public except pursuant to the terms of this NRUF/LNP Protective Order; we will make such information available to participants in this proceeding, but limit such access to their Outside Counsel of Record and Outside Consultants whom they retain to assist them in this proceeding, and their Outside Counsel's and Outside Consultants' employees. We conclude that the procedures we adopt in this NRUF/LNP Protective Order give appropriate access to the public while protecting particularly competitively sensitive information from improper disclosure, and that the procedures we adopt thereby serve the public interest.[6]

4. *Definitions.* As used herein, capitalized terms not otherwise defined in this NRUF/LNP Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix A hereto.

"Competitive Decision-Making" means that a person's activities, association, or relationship with any of his or her clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with a Wireless Telecommunications Carrier.

"NRUF/LNP Confidential Information" means the NRUF reports, the data contained in those reports, the LNP data, and any information derived from the reports or the data that is not otherwise available from publicly available sources.

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Reviewing Party" means a person who has obtained access to NRUF/LNP Confidential Information pursuant to paragraphs 5 or 7 of this NRUF/LNP Protective Order.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and

[5] *See, e.g.*, *AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, Protective Order, 26 FCC Rcd 6031 (WTB 2011); *AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Protective Order, 24 FCC Rcd 13915 (WTB 2009).

[6] This NRUF/LNP Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the NRUF/LNP Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

5. *Procedure for Obtaining Access to NRUF/LNP Confidential Information*. Access to NRUF/LNP Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to NRUF/LNP Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this NRUF/LNP Protective Order, and file the Acknowledgment with the Commission, so that it is received at least five business days prior to such person's reviewing or having access to the NRUF/LNP Confidential Information. Each Wireless Telecommunications Carrier shall have an opportunity to object to the disclosure of its NRUF/LNP Confidential Information to any such person. A Wireless Telecommunications Carrier must file any such objection at the Commission and serve it on Counsel representing, retaining, or employing such person within five business days after that person's Acknowledgment has been filed with the Commission. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection from a Wireless Telecommunications Carrier shall not have access to that carrier's NRUF/LNP Confidential Information.[7] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to NRUF/LNP Confidential Information by the Reviewing Party until the objection is resolved.

6. *Review of NRUF/LNP Confidential Information.* A Reviewing Party shall contact Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics, or Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau, to receive instructions on how to obtain and review NRUF/LNP Confidential Information. A Reviewing Party may temporarily load onto a computer NRUF/LNP Confidential Information. Once loaded, any files containing NRUF/LNP Confidential Information shall be password protected immediately. The NRUF/LNP Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying NRUF/LNP Confidential Information) to a mobile data storage medium. All files containing NRUF/LNP Confidential Information shall be deleted from the computer as soon as practicable. The mobile storage medium containing the results shall be stored securely and a record kept of any persons given access to them.

7. *Use of NRUF/LNP Confidential Information*. Persons obtaining access to NRUF/LNP Confidential Information under this NRUF/LNP Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any NRUF/LNP Confidential Information in its decision in this proceeding, it will do so either by redacting any NRUF/LNP Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to NRUF/LNP Confidential Information under this

[7] An objection ordinarily will first be ruled upon by the Wireless Telecommunications Bureau (Bureau). If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party.

NRUF/LNP Protective Order or by aggregating the NRUF/LNP Confidential Information such that no information of any Wireless Telecommunications Carrier (other than the Applicants) is revealed.

8. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of NRUF/LNP Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Wireless Telecommunication Carrier's own NRUF/LNP Confidential Information may also be disclosed to employees and Counsel of the carrier.

9. *Filings with the Commission*. A Reviewing Party may in any document that it files in this proceeding disclose NRUF/LNP Confidential Information only if it complies with the following procedure. The party shall file in the Commission's Universal Licensing System (ULS) as confidential one copy of the filing containing NRUF/LNP Confidential Information (the "NRUF/LNP Confidential Filing") and an accompanying cover letter. The cover or first page of the NRUF/LNP Confidential Filing and each page of the NRUF/LNP Confidential Filing that contains or discloses NRUF/LNP Confidential Information must be clearly marked "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NOS. 0010864059, 0010877919, and 0010902770 before the Federal Communications Commission." The cover letter shall also contain this legend. The NRUF/LNP Confidential Filing will not be placed in the Commission's public file. The party shall also submit in ULS a copy of the filing in redacted form, i.e., containing no Confidential Information (the "Redacted NRUF/LNP Confidential Filing").[8] The Redacted NRUF/LNP Confidential Filing and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted NRUF/LNP Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted NRUF/LNP Confidential Filing shall have the same pagination as the NRUF/LNP Confidential Filing from which it is derived. To the extent that any page of the NRUF/LNP Confidential Filing contains any type of Confidential Information and non-confidential information, only the Confidential Information (of whatever type) shall be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. One copy of each Redacted NRUF/LNP Confidential Filing and the accompanying cover letter must also be sent by email to Susannah Larson, Susannah.Larson@fcc.gov. Parties should not provide courtesy copies of pleadings containing NRUF/LNP Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

10. *Non-Disclosure of NRUF/LNP Confidential Information*. Except as provided under this NRUF/LNP Protective Order, NRUF/LNP Confidential Information shall not be disclosed further.

11. *Protection of Stamped NRUF/LNP Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to NRUF/LNP Confidential Information is strictly limited as prescribed in this NRUF/LNP Protective Order. A Reviewing Party shall further have the obligation to ensure that NRUF/LNP Confidential Information is used only as provided in this NRUF/LNP Protective Order.

12. *Requests for Additional Disclosure*. If any person requests disclosure of NRUF/LNP Confidential Information outside the terms of this NRUF/LNP Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

13. *Client Consultation*. Nothing in this NRUF/LNP Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying

[8] If a party is not able to submit filings via ULS, it must submit two copies each of the NRUF/LNP Confidential Filing and Redacted NRUF/LNP Confidential Filing, along with their respective cover letters, to the Office of the Secretary, Federal Communications Commission, via first-class or overnight U.S. Postal Service mail addressed to 45 L Street, NE, Washington, DC 20554, or via commercial courier (any deliveries not by U.S. Postal Service) to 9050 Junction Drive, Annapolis Junction, MD 20701.

generally on examination of NRUF/LNP Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose NRUF/LNP Confidential Information.

14. *No Waiver of Confidentiality*. Disclosure of NRUF/LNP Confidential Information as provided herein by any person shall not be deemed a waiver by any affected party of any privilege or entitlement to confidential treatment of such NRUF/LNP Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use NRUF/LNP Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of NRUF/LNP Confidential Information shall not be deemed a waiver of any privilege or entitlement.

15. *Subpoena by Courts, Departments, or Agencies*. If a court or a federal or state department or agency issues a subpoena for or orders the production of NRUF/LNP Confidential Information that a party has obtained under terms of this NRUF/LNP Protective Order, such party shall promptly notify the Commission and each affected Wireless Telecommunications Carrier of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Commission and each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production prior to the production or disclosure of any NRUF/LNP Confidential Information.

16. *Violations of NRUF/LNP Protective Order*. Should a Reviewing Party violate any of the terms of this NRUF/LNP Protective Order, such Reviewing Party shall immediately convey that fact to the Commission. Further, should such violation consist of improper disclosure of NRUF/LNP Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this NRUF/LNP Protective Order, including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding. Nothing in this NRUF/LNP Protective Order shall limit any other rights and remedies available to the affected Wireless Telecommunications Carriers at law or in equity against any person using NRUF/LNP Confidential Information in a manner not authorized by this NRUF/LNP Protective Order.

17. *Termination of Proceeding*. The provisions of this NRUF/LNP Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Commission all NRUF/LNP Confidential Information and all copies of the same. No material whatsoever containing NRUF/LNP Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this NRUF/LNP Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain NRUF/LNP Confidential Information, and one copy of orders issued by the Commission or Bureau that contain NRUF/LNP Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to the Commission not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of NRUF/LNP Confidential Information shall not be construed to apply to the Commission or its staff.

18. *Questions*. Substantive questions concerning this Protective Order should be addressed to Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics; Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau; and Joel Rabinovitz, Joel.Rabinovitz@fcc.gov.

19. *Authority*. This Order is issued pursuant to sections 4(i), 214, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 310(d), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Acknowledgment of Confidentiality

ULS File No. 0010864059
ULS File No. 0010877919
ULS File No. 0010902770

I hereby acknowledge that I have received and read a copy of the foregoing NRUF/LNP Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the NRUF/LNP Protective Order and that I shall not disclose or use NRUF/LNP Confidential Information except as allowed by the NRUF/LNP Protective Order.

I acknowledge that a violation of the NRUF/LNP Protective Order is a violation of an order of the Federal Communications Commission. I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of the Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the NRUF/LNP Protective Order limits any other rights and remedies available at law or in equity against me if I use NRUF/LNP Confidential Information in a manner not authorized by the NRUF/LNP Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the NRUF/LNP Protective Order is due solely to my capacity as Outside Counsel or Outside Consultant to a Participant or as a person described in paragraph 7 of the foregoing NRUF/LNP Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that NRUF/LNP Confidential Information is not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of NRUF/LNP Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of NRUF/LNP Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the NRUF/LNP Protective Order.

Executed this ___ day of _____, 20___.

_____

[Name]

[Position]

[Address]

[Telephone]

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

In the Matter of	)	
	)	
Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules	)))	GN Docket No. 15-319

ORDER

Adopted: September 13, 2024 **Released: September 13, 2024**

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau), Mobility Division, conditionally grants Google LLC's (Google or Petitioner)[1] request for a precautionary, limited, and conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service.[2] Google 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 were impacted by Hurricane Francine, including DPAs East 22-24, and the DPAs that may be impacted based on Francine's projected path, East 3, East 21, East 24, East 25, Pensacola, and Pascagoula (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Francine made landfall in the United States as a Category 2 hurricane Wednesday, September 11, 2024, bringing with it extreme rainfall, life-threatening flooding, and destructive winds to much of the Louisiana, Mississippi, and Texas Coast.[3] According to the National Oceanic and Atmospheric Administration, Francine weakened to a tropical depression by Thursday morning, September 12, 2024, but the risk of heavy rainfall and flooding will continue across large portions of the Southeast through Saturday, September 14, 2024.[4] For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

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[1] *See* Google LLC Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed September 12, 2024) (Waiver Request), https://www.fcc.gov/ecfs/document/10912284938213/1; *see also* State of Louisiana, Office of the Governor, *Governor Landry Declares State of Emergency* (Sep. 9, 2024), https://gov.louisiana.gov/news/4630; The White House, *President Joseph R. Biden, Jr. Approves Louisiana Emergency Declaration* (Sept. 10, 2024), https://www.whitehouse.gov/briefing-room/presidential-actions/2024/09/10/president-joseph-r-biden-jr-approves-louisiana-emergency-declaration-5/.

[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 Francine Advisory 7, 10:00 AM CDT Tue Sep 10, 2024, https://www.nhc.noaa.gov/graphics_at1.shtml?key_messages.

[4] National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Post-Tropical Cyclone Francine Advisory 19, 4:00 AM CDT Fri Sep 13, 2024, https://www.nhc.noaa.gov/graphics_at1.shtml?key_messages.

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 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. Google 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 Google to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Francine. Google seeks a waiver of these requirements in the interest of providing uninterrupted service to hundreds of Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, IP telephone, and television service to thousands of customers in areas that may be impacted by Francine.[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. Google reports that one of its ESC Sensor sites, E22, has lost commercial power and may exhaust available backhaul sources.[12] If further such outages occur, the Impacted Systems will lose commercial power and will be unable to operate normally.[13] Google contends that these power outages may cause DPAs in the affected areas to be

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[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*).

[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.

activated, impacting hundreds of CBSDs, potentially disconnecting thousands of customers—including critical broadband, IP telephone, and television services to homes and businesses.[14] According to Google, "[m]any customers, including those who have electric service or electricity through the use of generators, rely on these services to receive updates about ongoing dangers and essential services."[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 previous severe weather events[16] to allow the Google 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 Google SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either September 27, 2024, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Google 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 Francine, 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.

(Continued from previous page)

[13] *See* Waiver Request at 1.

[14] *Id.* at 2.

[15] *Id*.

[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); *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); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-814 (rel. Aug. 14, 2024); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-915 (rel. Sep. 10, 2024).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the request filed by Google LLC for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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 24-949
Released: September 16, 2024

FCC ANNOUNCES OCTOBER 18, 2024 MEETING OF THE DISABILITY ADVISORY COMMITTEE

By this Public Notice,[1] the Federal Communications Commission (FCC) announces the next meeting of the Disability Advisory Committee (DAC) to be held on Friday, October 18, 2024, at 9:00 a.m. until approximately 12 p.m. EST. The DAC meeting will be held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street, NE, Washington, DC 20554, and live-streamed at www.fcc.gov/live.

At this meeting, DAC members are expected to (i) discuss reports and recommendations from the working groups on quality Telecommunications Relay Services for individuals with multiple disabilities, online gaming accessibility for individuals who are blind or have low vision, and the use of artificial intelligence to caption live video programming; and (ii) address any other topics relevant to the DAC's work. The meeting agenda will be available at https://www.fcc.gov/news-events/events/2024/10/disability-advisory-committee-meeting and may be modified at the discretion of the DAC Co-Chairs and Designated Federal Officer (DFO).

The DAC meeting is open to the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. During the meeting, members of the public may submit questions and comments to the DAC via email: livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Open captioning and ASL 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 DAC, visit www.fcc.gov/dac. For specific questions about the DAC, contact Molly Burgdorf, Deputy DFO, at DAC@fcc.gov or (202) 418-2173.

– FCC –

[1] This Public Notice is released consistent with the Federal Advisory Committee Act, 5 U.S.C. § 1001 *et seq*.

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

In the Matter of	)	
	)	
Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies	)))	WT Docket No. 24-186

ORDER

Adopted: September 16, 2024 **Released: September 16, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In this Order, the Wireless Telecommunications Bureau (Bureau) denies the request of the Competitive Carriers Association (CCA) for an extension of time to file reply comments in response to the Notice of Proposed Rulemaking in the above captioned proceeding.[1] We find that the request does not provide adequate reasons to extend the time for commenters to file reply comments in this proceeding.

2. In the *Notice of Proposed Rulemaking* (*NPRM*), released July 19, 2024, the Commission proposes an industry-wide handset unlocking requirement for all mobile wireless service providers to further its efforts to promote consumer choice and maximize transparency, consistency, and competition within the mobile wireless marketplace. Comments in response to the *NPRM* were due on September 9, 2024, while reply comments are due on September 23, 2024.

3. On September 9, 2024, CCA filed a Motion for Extension of Time (Motion), seeking a 15-day extension of the reply comment deadline for the *NPRM*, until October 8, 2024.[2] CCA argues that the proposed unlocking requirement would "require significant changes to mobile providers' existing operations," and that "given the potentially significant impact of the Commission's proposal," the Commission "should ensure the record it develops in the proceeding is as complete and robust as possible."[3] CCA maintains that additional time to file reply comments is necessary to ensure that the concerns of all relevant parties are heard.[4] T-Mobile filed in support of CCA's request.[5] The Internet and Competitive Networks Association, together with Consumer Reports, and Public Knowledge (collectively INCOMPAS) opposed CCA's Motion.[6]

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[1] *See Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, Notice of Proposed Rulemaking, WT Docket No. 24-186, FCC 24-77 (July 19, 2024); 89 Fed. Reg. 64843 (August 8, 2024).

[2] *See* Competitive Carriers Association Motion for Extension of Time, WT Docket No. 24-186 (filed Sept. 9, 2024) (Motion).

[3] *Id.* at 1–2.

[4] *Id.*

[5] T-Mobile USA, Inc. Filing in Support of Competitive Carriers Association's Motion for Extension of Time, WT Docket No. 24-186 (filed Sept. 11, 2024).

[6] Opposition of INCOMPAS, Consumer Reports, and Public Knowledge to Competitive Carriers Association's Motion for Extension of Time, WT Docket No. 24-186 (filed Sept. 12, 2024) (INCOMPAS Opposition).

4. As set forth in section 1.46 of the Commission's rules, extensions of time shall not be routinely granted.[7] We do not find persuasive CCA's argument that an extension of time to file reply comments is necessary to ensure the record is "complete and robust." The *NPRM* was released on July 19, 2024, so all interested parties had adequate notice that reply comments would be due 15 days after the comment deadline. As INCOMPAS notes, the comments that have been posted to the record by the September 9, 2024, deadline do not constitute "[a]n overwhelming number of comments or technical components to review, which makes the record here manageable to respond to by the current reply comment deadline."[8] CCA's assertion that the proceeding has implications for a wide variety of stakeholders also does not justify an extension,[9] as it is typical for Commission rulemaking proceedings to have wide-reaching impacts on numerous industries and interest groups.[10] The circumstances identified by CCA are not sufficiently unique or unusual to warrant deviation from the established deadline.[11] The deadline for reply comments to the *NPRM* remains September 23, 2024.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR §§ 0.131, 0.331, and 1.46, the Motion for Extension of Time filed by Competitive Carriers Association, on September 9, 2024, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

[7] 47 CFR § 1.46(a).

[8] *See* INCOMPAS Opposition at 2.

[9] Motion at 2.

[10] *See Expanding Flexible Use of the 12.2–12.7 GHz Band*, Order, 38 FCC Rcd 6805, 6806, para. 3 (WTB 2023) ("Moreover, Commission rulemaking proceedings often have implications for the long-term interests of multiple interested industries. We therefore find nothing sufficiently unique or unusual that would warrant significant extensions of the comment deadlines in this instance.").

[11] *See id.* (citing 47 C.F.R. § 1.46); *see also Universal Service Reform – Mobility Fund*, Order, 29 FCC Rcd 10468, 10469, para. 3 (2014).

PUBLIC NOTICE

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

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

DA 24-951
Released: September 16, 2024

FCC ANNOUNCES THE SECOND MEETING OF THE NINTH COMMUNICATIONS SECURITY, RELIABILITY, AND INTEROPERABILITY COUNCIL ON SEPTEMBER 27, 2024

This Public Notice serves as an announcement that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission (FCC or Commission) will hold the second meeting of the Communications Security, Reliability and Interoperability Councill IX (CSRIC IX or Council) on **Friday, September 27, 2024, beginning at 1:00 pm EDT, at the FCC, 45 L Street, N.E., Washington, D.C., and via video conference call.** Notice of this meeting was published in the Federal Register on September 11, 2024.[2]

The second meeting will include presentations from the working group co-chairs announcing their membership and the plans to address their assigned task. The meeting is open to the public and will be streamed live at http://www.fcc.gov/live. While the CSRIC IX meeting is open to the public, the FCC headquarters building is not open access. All guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees will not be required to have an appointment but must otherwise comply with protocols outlined at: https://www.fcc.gov/visit. Members of the news media are welcome to attend the meeting.

The CSRIC IX meeting will also be streamed via live feed at https://www.fcc.gov/live. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is required 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 CSRIC can be found at https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-0. You may also contact Suzon Cameron, Designated Federal Official (DFO) for CSRIC IX, at (202) 418-1916, Kurian Jacob, Deputy DFO, at (202) 418-2040, or Logan Bennett, Deputy DFO at (202) 418-7790 and via the CSRIC e-mail account at CSRIC@fcc.gov.

–FCC–

[1] 5 U.S.C. §§ 1001-1014.

[2] Federal Communications Commission, Communications Security, Reliability, and Interoperability Council, Notice of Public Meeting, 89 FR 73652 (September 11, 2024).

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 24-952
Released: September 17, 2024

CORES DATABASE HAS BEEN UPDATED WITH REVISED AM & FM RADIO STATION FEE CODES AND FEE AMOUNTS FOR FY 2024 REGULATORY FEES

The FCC has resolved the fee issues that arose towards the end of last week for certain Media Bureau fee payors. Media services licensees can now log into the CORES System to see their revised AM and FM fee codes and fee amounts. Payment **must be received** by the Commission no later than 11:59 PM Eastern Daylight Time, on **September 26, 2024**, to avoid an assessment of a late payment penalty and interest. The FCC will be evaluating all payments that were made by AM or FM broadcasters between September 10, 2024, when CORES first opened, and today, when revised fee amounts became available for viewing in the CORES system. The FCC will take action to reconcile the payments that have already been made and will try to contact affected broadcasters.

Please also note that Low Power FM stations that have a call sign of "Call Sign – LP" are not subject to FY 2024 regulatory fees. The Commission will be removing these call signs from the CORES database or flagging them as "Not Feeable" shortly.

ADDITIONAL INFORMATION

Licensees and regulatees can contact the Commission's Financial Operations help desk with inquiries regarding regulatory fees at (877) 480-3201, Option 6, or email inquiries to ARINQUIRIES@fcc.gov.

- FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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DA 24-953
Released: September 17, 2024

BROADBAND DATA TASK FORCE AND OFFICE OF ENGINEERING AND TECHNOLOGY SEEK COMMENT ON GEORGIA INSTITUTE OF TECHNOLOGY'S THIRD-PARTY MOBILE SPEED TEST APP

ET Docket No. 24-2
WC Docket No. 19-195
ET Docket No. 22-152

Comments Due: October 17, 2024
Reply Comments Due: November 1, 2024

By this *Public Notice*, the Broadband Data Task Force (BDTF) and the Office of Engineering and Technology (OET) seek comment on an application for approval of the Georgia Institute of Technology's (Georgia Tech) third-party mobile speed test app for use in the FCC's Broadband Data Collection (BDC) mobile challenge process. In conjunction with this *Public Notice*, the BDTF and OET will publish information regarding approved third-party speed test apps and available data specifications on the Broadband Data Collection page on the Commission's website at https://www.fcc.gov/BroadbandData/third-party-mobile-speed-test-apps.[1]

In the *Third-Party App Procedures Public Notice,* OET adopted procedures for third-party mobile speed test application developers to submit, for OET review and approval, proposals for mobile speed test applications for use in collecting and submitting mobile network performance data as part of the BDC.[2] On July 10, 2024, in accordance with the procedures set forth in the *Third-Party App Procedures Public Notice*, Georgia Tech submitted an application to OET for approval of the mobile speed test app

[1] *See Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007, 3022, para. 25 (WTB/OEA/OET 2022) (*BDC Mobile Technical Requirements Order*); FCC, *Data Specifications for Mobile Speed Test Data* (2022), https://us-fcc.app.box.com/v/bdc-mobile-speedtest-spec.

[2] *Broadband Data Task Force and Office of Engineering and Technology Announce Procedures for Third-Party Mobile Speed Test Applications Seeking Approval for Use in the FCC's Broadband Data Collection*, WC Docket No. 19-195, ET Docket No. 22-152, Public Notice, 37 FCC Rcd 5004, 5004, para. 1 (OET 2022) (*Third-Party App Procedures Public Notice*). In the *BDC Third Report and Order*, the Commission adopted a requirement that consumers submitting on-the-ground data to challenge the availability and quality of service of mobile wireless broadband coverage data do so "us[ing] a speed test application that has been designated by OET, in consultation with OEA and WTB, for use in the [mobile] challenge process." *Establishing the Digital Opportunity Data Collection*; *Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, *Third Report and Order*, 36 FCC Rcd 1126, 1166, para. 103 (2021) (*BDC Third Report and Order*). Additionally, the Commission specified that "applications approved by OET for collecting consumer challenges must automatically collect [specific] information associated with each speed test . . . . [and] designated applications must allow consumer challengers to submit all of the information required to support a challenge directly to the Commission from their mobile device." *Id.* at 1166-67, para. 103.

"CellWatch v1.0" to collect and submit BDC mobile challenge data.[3] As part of its application, Georgia Tech submitted a proposal (in the template set forth in Appendix A of the *Third-Party App Procedures Public Notice*),[4] beta version of the app, sample test data, and a privacy policy for the app.[5]

OET has conducted an initial review of the proposal and finds that Georgia Tech has provided sufficient information and details related to the various requirements to warrant public comment on the proposal prior to approval.[6] Interested parties may review the proposal, including a beta version of the app, test data results, and privacy policy, and may file comments and reply comments in ET Docket No. 24-2.[7] As discussed in the *Third-Party App Procedures Public Notice*, comments on third-party app proposals should address technical deficiencies in the submission(s), including whether any required information is missing from the proposal (notwithstanding OET's initial review); whether the proposed test system architecture would prevent the Commission, mobile broadband service providers, or other interested parties from reliably receiving the data needed to adjudicate a challenge or evaluate mobile crowdsourced submissions; whether the proposal fails to satisfy applicable privacy, security, or other policy requirements; or whether the proposal has any other shortcomings of the requirements as described in OET Bulletin 75.[8] We also encourage commenters to provide information or comments on specific testing methodologies underlying the third-party app, which OET may consider as part of its evaluation and review of the third-party app proposal.[9]

We note that Georgia Tech has submitted only a beta version of the app, and has not made a production version of the app available for download. As a result, any approval of the CellWatch v1.0 app by OET will be conditional and subject to submission of the production version of the app and review by OET to ensure that it complies with applicable technical requirements.[10] Please note that the version of the app available for review is an app developed by a third party and not the FCC; while the FCC has reviewed the privacy policy for completeness against our requirements, we have not independently validated the claims, and the FCC is not responsible for the performance or security of the current version of the app. Once approved and designated by OET for use in the BDC mobile challenge process, the

[3] Application of Georgia Institute of Technology, ET Docket No. 22-152 (filed July 10, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/10710974725173 (Georgia Tech Application); *see Third-Party App Procedures Public Notice*, 37 FCC Rcd at 5006-10, paras. 6-15 (setting forth procedures for third-parties to submit to OET application proposals seeking approval of their app for the collection and submission of mobile BDC challenge data). The Georgia Tech mobile speed test app will collect data for the mobile challenge process. Georgia Tech Application at 4. It will not collect data for the mobile crowdsource process. *See id.*

[4] *Third-Party App Procedures Public Notice*, 37 FCC Rcd at 5014-15, Appx. A.

[5] *See* Georgia Tech Application.

[6] *Third-Party App Procedures Public Notice*, 37 FCC Rcd at 5010, para. 16.

[7] *See Id.* at 5010-11, paras. 16-17. Interested parties can find the *proposal*, privacy policy, and sample data at https://www.fcc.gov/ecfs/search/search-filings/filing/10710974725173. A link to download the beta version can be found in section C of the proposal document.

[8] *Id.* at 5011, para. 20.

[9] *Id*.

[10] *Id.* at 5010-11, para. 17. To the extent that the production version deviates from the conditionally approved beta version, it will be subject to either the minor change or major change procedures set forth in the *Third-Party App Procedures Public Notice and OET Bulletin 75. Id.* at 5011, paras. 18-19; Office of Engineering and Technology, OET Bulletin: Broadband Data Collection Program: Third-Party Speed Test Mobile Application Approval Process Guidance (2022), https://www.fcc.gov/sites/default/files/oet75.pdf.

CellWatch v1.0 app would be approved for use in the BDC mobile challenge process for a term of five years.[11]

Concurrent with this announcement of the first proposal for approval of a third-party app, BDTF and OET are publishing a webpage for noticing approved third-party speed test apps, which can be found at: https://www.fcc.gov/BroadbandData/third-party-mobile-speed-test-apps. A list of approved third-party speed test apps, as well as any available data specifications for third-party apps, will be available on this webpage.[12] The webpage will also identify any approved third-party speed test apps whose approval term has expired or that have requested that the FCC discontinue their participation in the BDC program.[13]

Comment Filing Procedures. 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) in ET Docket No. 24-2.

- 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 and Governmental Affairs Bureau at 202-418-0530 (voice).

Ex Parte Rules. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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

[11] *Third-Party App Procedures Public Notice*, 37 FCC Rcd at 5012, para. 23.

[12] *Id.* at 5011, para. 22 (citing *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3022, 3072, paras. 25, 122).

[13] *Id.* at 5012, para. 25.

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.

Further Information. Questions regarding this *Public Notice* may be directed to Janet Moran at janet.moran@fcc.gov or 202-418-7923.

-FCC-

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DA 24-954
September 18, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 34 (OKLAHOMA) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

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

The Region 34 (Oklahoma) Regional Planning Committees (RPCs) will hold two consecutive planning meetings at the 2024 APCO/NENA Public Safety Conference on Monday, October 14, 2024. Beginning at 10:00 am, the 700 MHz RPC will convene at the Choctaw Casino and Resort, 4216 US-69, Durant, OK 74701. Immediately following the 700 MHz RPC meeting, the 800 MHz RPC will convene at the same location.

The agenda for both the 700 MHz and 800 MHz RPC meetings include:

- Call to Order – Scott Walsh
- Old Business
- New Business
- Election of Officers
- Adjourn

Both Region 34 RPC meetings are open to the public. All eligible public safety providers in Region 34 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz, 800 MHz, and 4.9 GHz bands within Region 34 should plan to attend. For further information, please contact:

Scott Walsh
Chair, 700 and 800 MHz RPC/Communications Coordinator
City of Midwest City
100 N. Midwest Blvd
Midwest City, OK 73110
PH: 405-739-1372

- FCC -

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 24-955
September 18, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 1 (ALABAMA) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES TO HOLD PLANNING MEETING

PS Docket 23-237 and WT Docket 02-378

The Region 1 (Alabama) 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold a joint meeting on Sunday, October 13, 2024 at 2:00 pm (CST). The meeting will be held at the Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561.

The agenda for the 700/800 MHz meeting includes:

- Call to order
- Approval of Minutes
- Treasurer Report
- 800 MHZ Plan Update
- General Discussion
- Technical Subcommittee Report
- Election of Officers
- Adjourn

The Region 1 700 MHz and 800 MHz RPC meeting is open to the public. It is essential that public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's rules, 47 CFR § 90.523, be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 1 should plan to attend.

For further information, please contact:

Richard E. Ranson
Chairman 700 MHz and 800 MHz RPC's
The University of Alabama – Public Safety Administration – Radio Communications
7400 Richard M. Pierce Parkway
Northport, Alabama 35473
205-347-1033 Office
rranson@ua.edu

Robert Manning
Vice Chairman 700 & 800 MHz RPC
Vice Chair
Radio Network Manager, Birmingham 911 District
711 19th St N, Birmingham, AL 35203
Phone: 205-254-2420
Robert.Manning@birminghamal.gov

Ernie Blair
Treasurer 700 MHz RPC
Huntsville Madison County E911
5827 Oakwood Road, NW Huntsville, AL 35806-1529
(256) 722-7341
Eblair@madco911.com

Michael Lee
Secretary 700 & 800 MHz RPC's
Jefferson County 911 Emergency Communications District
2659 Center Point Pkwy, Birmingham, AL 35215
Phone: 205-783-1702
leemg@jeffcoal911.org

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PUBLIC NOTICE

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DA 24-956
September 18, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 20 (DISTRICT OF COLUMBIA, MARYLAND AND NORTHERN VIRGINIA) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

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

The Region 20 Public Safety 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive in-person planning meetings on Wednesday, October 23, 2024. Beginning at 10:00 am, the meetings will be held at the Department of Information Technology (1st floor/conference rooms A and B), 100 Community Place, Crownsville, Maryland 21032.

The agenda for the 700/800 MHz meeting includes:

- Call to order and welcome to all guests
- Approval of April 24, 2024, meeting minutes
- Old business
- Chairman's Remarks on issues of importance in Region 20
  - Update on interoperability enhancements in the Nation's Capital
  - Planning for 2025 Inauguration – critical importance of Region 20 interoperability code plug for deployable trunking
- Updates from the Statewide Interoperability Coordinators/Maryland FiRST
- New business
  - Allocation of new 700 and 800 MHz frequencies for Loudoun County
  - Allocation of new 700 MHz frequencies for Arlington County
  - Allocation of new 700 MHz frequencies for Howard County
- Election of Region 20 officers for the 2025-2027 term
  - Nominations
  - Election
- Program topics
  - T-Mobile presentation on emerging technologies regarding satellite to subscriber communications, direct to device communications, LTE, 5G and LTE>LMR integrations.
  - Verizon Wireless presentation on emerging technologies regarding satellite to subscriber communications, direct to device communications, LTE, 5G and LTE>LMR integrations.
  - ATT/FirstNet presentation on emerging technologies regarding satellite to subscriber communications, direct to device communications, LTE, 5G and LTE>LMR integrations.
- Thanks and Recognition of retiring Region 20 RPC Officers.
- Adjournment - Next Meeting Date: TBD

Both Region 20 Public Safety RPC meetings are open to the public. All eligible public safety providers in Region 20 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 20 should plan to attend.

For further information, please contact:

Charles V. Bryson, Chair
Region 20 700 MHz and 800 MHz Public Safety RPCs
100 Community Place
Crownsville, MD 21032
Phone: 410-807-8102
E-mail: charles.bryson@maryland.gov
region20chair@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: http://www.fcc.gov
TTY: 1-888-835-5322

DA 24-957
September 19, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 15 (IOWA) 700 MHz AND 800 MHz REGIONAL PLANNING COMMITTEES TO HOLD MEETINGS

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

The Region 15 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive virtual meetings on Thursday, October 10, 2024. Beginning at 1:30 PM (CDT), the Region 15 700 MHz RPC will convene via Microsoft Teams. The Region 15 800 MHz RPC meeting will convene immediately following the conclusion of the 700 MHz RPC meeting.

Join meeting from your computer, tablet or smartphone at:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2IzNTEyMDctM2JiZC00Yzc1LThkMWQtNWIyMTAwYWVmMDA1%40thread.v2/0?context=%7b%22Tid%22%3a%220888b8b3-3118-4db6-902b-27d903f073cc%22%2c%22Oid%22%3a%229f24b0a7-b0cd-4c91-ba48-d54fc96d1b56%22%7d

- Meeting ID: 231 288 311 336
- Passcode: 4ksY8H
- Meeting also available by phone: +1 515-207-8241
- Phone conference ID: 547 046 203#

The agenda for the 700 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: May 9, 2024
- Public Comment & Correspondence
- Chairperson's Report
- Old Business
- Review of Applications
- New Business
  - Election of 2025 Officers
- Next meeting
- Adjourn

The agenda for the 800 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: May 9, 2024
- Public Comment & Correspondence
- Chairperson's Report

- Old Business
  - Discussion and possible action to authorize updating and amending the plan.
- Review of Applications
- New Business
  - Election of 2025 Officers
- Next meeting
- Adjourn

The Region 15 RPC meetings are open to the public. All public safety providers in Region 15 may utilize these 700 MHz and 800 MHz 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 15 should plan to attend. For further information, please contact:

Rob Dehnert
Chair, 700 MHz and 800 MHz RPCs
City of West Des Moines, Iowa
Westcom Emergency Medical and Communications Services
Phone: 515-273-0762
Email: rob.dehnert@wdm.iowa.gov

Jason Hoffman
Vice Chair
jhoffman@carrollcountyiowa.org

Nick Brockman
Secretary
nick.brockman@polkcountyiowa.gov

- FCC -

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

In the Matter of	)	
	)	
Application of SES S.A.	)	SB Docket No. 24-267
	)	
and	)	
	)	
Intelsat Holdings S.à.r.l.	)	
	)	
For Consent to Transfer Control of Licenses Held by Intelsat Holdings S.à.r.l. and its Subsidiaries	)	

PROTECTIVE ORDER

Adopted: September 17, 2024 **Released: September 17, 2024**

By the Chief, Space Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed in this proceeding, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information submitted by participants in this proceeding and information we request as relevant and material to the issues raised by the applications constitute the record on which the Commission must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."[1]

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

[1] 47 U.S.C. § 154(j).

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules, unless the Commission determines, sua sponte or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules,2 that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

"Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the FOIA and the Commission's implementing rules; and that the Submitting Party or a Third-Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Protective Order, as the same may be amended from time to time; unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

"In-House Counsel" means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel's employer is considered his or her client.)

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Party" means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

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[2] 47 CFR §§ 0.459, 0.461.

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

"Third-Party Interest Holder" means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party's representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.[3]

4. *Challenge to Designation*. Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.[4] Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits

[3] *See* 47 CFR § 0.459(a).

[4] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.[5]

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION", as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System ("ECFS") a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.[6] Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information. In addition, one copy of each Stamped Confidential Document and Stamped Highly Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Clay DeCell, clay.decell@fcc.gov, Space Bureau, (202) 418-0803; and Patrick Sun, patrick.sun@fcc.gov, Office of Economics and Analytics, (202) 418-2753, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

6. *Copying Sensitive Documents*. If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known

[5] *See* 47 CFR §§ 0.459(h), 0.461.

[6] If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary's Office along with the appropriately stamped cover letter.

Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*[7] Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.[8] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

[7] This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

[8] An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

10. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. A Submitting may, but is not required to, transmit the information electronically to a Reviewing Party. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential and Highly Confidential Information*. Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission*. A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN SB DOCKET NO. 24-267 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.[9] The Redacted Confidential Filing and the accompanying cover letter shall be stamped

[9] If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

"REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Clay DeCell, clay.decell@fcc.gov, Space Bureau, (202) 418-0803; and Patrick Sun, patrick.sun@fcc.gov, Office of Economics and Analytics, (202) 418-2753, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

16. *Requests for Additional Disclosure*. If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.[10]

17. *Client Consultation*. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

18. *No Waiver of Confidentiality*. Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *Subpoena by Courts, Departments, or Agencies*. If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of

[10] 47 CFR §§ 0.442, 0.461.

such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions*. Questions concerning this Protective Order should be addressed to Clay DeCell, clay.decell@fcc.gov, Space Bureau, (202) 418-0803; or to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Transaction Team, Office of General Counsel.

23. *Authority*. This Order is issued pursuant to Sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), and authority delegated under Section 0.261 of the Commission's rules, 47 CFR § 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Stamped Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share, or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides numbers of customers and revenues broken down by customer type (e.g., business) and zip code or market area (e.g., CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market, and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, or maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B

Acknowledgment of Confidentiality

SB Docket No. 24-267

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 20__.

_____

[Name]
[Position]
[Firm]
[Telephone]

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

In the Matter of	)	
	)	NAL/Acct. No. MB-202441410017
Cadena Radial Remanente,	)	FRN: 0023104227
	)	Facility ID No. 195343
For Renewal of License for	)	
Station KZLQ-LP, La Quinta, California	)	File No. 0000155938

ORDER

Adopted: September 30, 2024 **Released: September 30, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Cadena Radial Remanente (CRR or Licensee), licensee of low power FM station KZLQ-LP, La Quinta, California (Station). The Consent Decree resolves issues regarding CRR's compliance with: (1) section 73.865(d) of the Commission's rules (Rules),[1] previously section 73.865(e),[2] providing that sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change; (2) section 73.860(d) of the Rules, which provides that "a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest;"[3] (3) section 73.3580(c)(3)(i) of the Rules, which requires the broadcast of on-air announcements for applications for the renewal of LPFM licenses;[4] and (4) section 1.65 of the Rules, which requires that applicants maintain the accuracy of their applications during their pendency, and promptly provide updated or corrected information as necessary.[5] Also before us is the above-captioned application for renewal of license (Application) filed by CRR on August 2, 2021, an informal objection to the Application filed by Garry Wing (Wing Objection),[6] an informal objection to the Application filed by Triangle Access Broadcasting, Inc. (Triangle and Triangle Objection, collectively, Objections),[7] and related responsive pleadings.[8]

[1] 47 CFR § 73.865(d).

[2] *See Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12542, para. 56 (2019) (redesignating 47 CFR § 73.865(e) as 47 CFR § 73.865(d)) (*2019 NCE/LPFM Report and Order*).

[3] 47 CFR § 73.860(d).

[4] *Id.* § 73.3580(c)(3)(i).

[5] *Id.* § 1.65(a).

[6] Pleading File No. 0000164759 (filed Oct. 15, 2021).

[7] Pleading File No. 0000186667 (filed Mar. 15, 2022).

[8] CRR filed an Opposition to the Triangle Objection, Pleading File No. 0000212716 (filed Mar.19, 2023) (Triangle Opposition), and an Opposition to the Wing Objection, Pleading File No. 0000212717 (filed Mar. 19, 2023) (Wing Opposition). Triangle filed a Reply, Pleading File No. 0000213097 (filed Mar. 29, 2023) (Reply).

II. BACKGROUND

2. *Wing Objection*. The Wing Objection alleges that the Station is causing interference "on both sides of Channel 255" because it is operating with an excessive transmitter power output (TPO) level.[9] Specifically, the Wing Objection states that, based on the Station's licensed Effective Radiated Power (ERP) of three watts, it should be operating with a TPO of "no more than 7.9 watts," and not the 15 watts that was reported on the Station's License to Cover application.[10] The Wing Objection also alleges that the Station "has never aired a single [Emergency Alert System (EAS)] test during the 3+ years [it has] been licensed to operate,"[11] and that the Station did not provide local public notice of the Application.[12]

3. In the Wing Opposition, CRR states that the Station is required to operate at a TPO level of 15 watts per its license, that Mr. Wing did not file an objection to the Station's License to Cover Application, and that "[a]ny complaint Mr. Wing has with respect to the licensed TPO is a late-filed request for reconsideration of that Application."[13] Regarding the allegations that the Station has not aired EAS tests and that it did not provide public notice of the Application, CRR states that these allegations "are not adequately supported by requisite statements of fact."[14]

4. *Triangle Objection*. In its Objection, Triangle alleges that CRR, Remanente Broadcasting Network (RBN),[15] and Cadena Radial Mision Y Vision (Mision)[16] were commonly controlled in violation of the cross-ownership restrictions in section 73.860 of Rules.[17] Triangle also alleges that CRR filed inaccurate information with the Commission to conceal such interests, as evidenced by conflicting information filed with other federal and state agencies.[18]

5. In the Triangle Opposition, CRR states that "[o]ther than family relationships that exist between certain of them, the current principals of CRR have no involvement in the management of [RBN or Mision]."[19] CRR also states that there are "no other attributable broadcast interests that were not properly reported," and that "the Board of Directors of [CRR, RBN, and Mision] operate independently of each other."[20] In the Reply, Triangle argues that although there is no current overlap between the organizations, CRR nonetheless admitted it previously had overlapping board members with Mision's board.[21]

6. On July 1, 2022, CRR filed an application for a *pro forma t*ransfer of control in which it identified Julia Gonzalez, Ramon Reynaga, and Jaime Mitrani as outgoing board members, and identified

[9] Wing Objection at 1; Declaration of William Watson, Attach. to Wing Objection (Watson Declaration).

[10] Watson Declaration; *see* Application File No. BLL-20180116ABJ.

[11] Wing Objection at 1.

[12] *Id*. at 2.

[13] Wing Opposition at 2; *see* Application File No. BLL-20180116ABJ.

[14] Wing Opposition at 3.

[15] RBN is an applicant for construction permits for new noncommercial educational (NCE) FM stations. *See* Applications File Nos. 0000167138, 0000167140, 0000167147, 0000167635.

[16] Mision is the licensee of LPFM station KRAQ-LP, Rancho Mirage, California.

[17] Triangle Objection at 2; *see* 47 CFR § 73.860.

[18] Triangle Objection at 3.

[19] Triangle Opposition at Attach. 1, Declaration of Olivia Gonzalez,

[20] Triangle Opposition at 2.

[21] Triangle Reply at 2-3.

a new board consisting of Olivia Gonzalez, Daniella Werner, and Jesse Villareal.[22] On March 1, 2024, the Bureau sent a Letter of Inquiry (LOI) to CRR regarding the allegations made in the Objections,[23] to which CRR responded (CRR LOI Response). Triangle submitted comments to the CRR LOI Response (Triangle LOI Comments).

III. DISCUSSION

7. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k)(l) of the communications Act of 1934, as amended (Act). Under section 309(k) of the Act, the Commission shall grant the renewal application 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.[24] 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 that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[25]

8. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would *be prima facie* inconsistent with section 309(k) of the Act.[26] For the reasons set forth below, we grant the Objections to the extent indicated herein.

9. *LPFM Cross-Ownership and Unauthorized Transfers of Control*. Section 73.860(d) of the Rules states that, "a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest."[27] Section 73.865(d) of the Rules,[28] previously section 73.865(e),[29] provides that sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change. Here, Edith Gonzalez Werner (Werner) and Delia Gloria Gonzalez (Gonzalez) were common directors of, and thus held an attributable interest in, CRR and Mision, between 2018 and 2021, with each holding a 33.3% voting interest in the two licensees. Furthermore, CRR failed to file *pro forma* transfer of control applications following its sudden majority board changes when: (1) Werner and Gonzalez became directors of CRR in 2018; and (2) when Werner and Gonzalez were replaced as directors in 2021.[30] Accordingly, we find, and CRR admits, that it violated sections 73.865(e), 73.865(d), and 73.860(d) of

[22] *See* Application File No. 0000194361 (filed July 1, 2022, granted July 20, 2022).

[23] Letter from Albert Shuldiner, Chief, Audio Division, to CRR, Application File No. 0000155938 (dated March 1, 2024).

[24] 47 U.S.C. § 309(k)(l). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104,110 Stat. 56(1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

[25] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[26] *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).

[27] 47 CFR § 73.860(d).

[28] *Id*. § 73.865(d).

[29] *Id*. § 73.865(e); *2019 NCE/LPFM Report and Order*.

[30] CRR's failure to file a *pro forma* transfer of control application in 2018 violated 47 CFR § 73.865(e), and its failure in 2021 violated 47 CFR § 73.865(d).

the Rules.[31]

10. *Local Public Notice and Failure to Maintain Accuracy*. Section 73.3580(c)(3)(i) of the Rules requires the broadcast of on-air announcements for applications for the renewal of LPFM licenses.[32] Section 1.65 of the Rules requires that applicants maintain the accuracy of their applications during their pendency, and promptly provide updated or corrected information as necessary.[33] Here, CRR failed to provide on-air local public notice of the Application.[34] CRR also failed to amend the Station's pending construction permit application when it changed its three-member board of directors in 2015 to replace Anna Serna with Ramon Reynaga.[35] Accordingly, we find, and CRR admits, that it violated sections 73.3580(c)(3)(i) and 1.65 of the Rules.[36]

11. We have negotiated the Consent Decree adopted herein, in which the Licensee acknowledges that it violated sections 73.865(e), 73.865(d), 73.860(d), 73.3580(c)(3)(i), and 1.65 of the Rules. Pursuant to the Consent Decree, CRR agrees, among other things, to implement a comprehensive compliance plan and pay a Civil Penalty to the United States Treasury in the amount of nine thousand dollars ($9,000). Accordingly, upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in the attached Consent Decree, we will grant the Application.

12. Finally, we have reviewed the Application in accordance with section 309(k) of the Act[37] and find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing in the record creates a substantial or material question of fact calling for further inquiry regarding the Application. After reviewing the record and the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree, terminating the Bureau's investigation of the issues raised in the Objections, and granting the Application.

IV. CONCLUSION

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i) of the Act,[38] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[39] the Consent Decree attached hereto **IS**

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[31] We reject Triangle's assertion that CRR intentionally misled the Commission by filing conflicting information about its directors with other federal and state agencies. While, as discussed above, CRR failed to file *pro forma* transfer of control applications on two occasions when its board changed, and failed to amend its pending construction permit application when its board changed, Triangle has not shown, and we do not perceive, any intention by CRR to deceive the Commission. Indeed, as Triangle concedes in its LOI Comments, CRR's LOI Response, "does not support a conclusion of a premeditated intent to mislead the Commission." Triangle LOI Comments at 1. Accordingly, we find that the allegation does not warrant further consideration.

[32] 47 CFR § 73.3580(c)(3)(i).

[33] *Id*. § 1.65(a).

[34] We reject the allegation in the Wing Objection that CRR failed to provide online notice as LPFM stations are not required to post such notice for license renewal applications. *See* 47 CFR § 73.3580(c)(3)(i) ("For a . . . LPFM station, the applicant shall broadcast on-air announcements.").

[35] *See* Application File No. BNPL-20131113ABE.

[36] We reject the allegation in the Wing Objection that the Station operates with an excessive TPO level. While the Wing Objection includes a declaration from engineer William Watson regarding his technical observations, it does not provide sufficient support for its claim. *See* Watson Declaration. Furthermore, Mr. Wing did not submit a reply to the Wing Opposition, nor did he submit comments to CRR's LOI Response. Accordingly, without additional support, we find that the allegation does not warrant further consideration. We also reject the allegation in the Wing Objection that CRR did not air EAS tests as the Objection fails to provide specific allegations of fact to support its claim. Indeed, it provides a conclusory statement as its only support. Wing Objection at 1.

[37] 47 U.S.C. § 309(k)(1).

[38] 47 U.S.C. § 4(i).

[39] 47 CFR §§ 0.61, 0.283.

ADOPTED without change, addition, or modification.

14. **IT IS FURTHER ORDERED** that the Informal Objection filed by Garry Wing on October 15, 2021, and the Informal Objection filed by Triangle Access Broadcasting, Inc. on March 15, 2022, **ARE GRANTED TO THE EXTENT INDICATED HEREIN**.

15. **IT IS FURTHER ORDERED** that the application of Cadena Radial Remanente, for renewal of license for low power FM station KZLQ-LP, La Quinta, California, Facility ID No. 195343 (Application File No. 0000155938) **IS GRANTED**, as conditioned herein.

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

17. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Cadena Radial Remanente, c/o Arturo Gonzalez, and to its counsel, Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 2120 21st Rd. 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	)	
	)	NAL/Acct. No. MB-202441410017
Cadena Radial Remanente,	)	FRN: 0023104227
	)	Facility ID No. 195343
For Renewal of License for	)	
Station KZLQ-LP, La Quinta, California	)	File No. 0000155938

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and Cadena Radial Remanente (CRR or Licensee), licensee of low power FM (LPFM) station KZLQ-LP, La Quinta, California, for the purpose of terminating the Bureau's investigation of CRR's compliance with sections 73.865(e), 73.865(d), 73.860(d), 73.3580(c)(3)(i), and 1.65 of the Commission's Rules.[40] Pursuant to the Consent Decree, CRR agrees, among other things, to implement a comprehensive compliance plan to ensure its future compliance with the LPFM Cross-Ownership and LPFM Assignment and Transfer of Control Rules, and to pay a Civil Penalty to the United States Treasury in the amount of nine thousand dollars ($9,000).

II. DEFINITIONS

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

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

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

(c) "Application" means the pending application for renewal of license for station KZLQ-LP, La Quinta, California, Facility ID No. 195343 (Application File No. 0000155938);

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

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

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

(g) "Cross-Ownership Rule" means 47 CFR § 73.860(d);

(h) "CRR" means Cadena Radial Remanente;

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

(j) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;

[40] 47 CFR §§ 73.865(e), 73.865(d), 73.860(d), 73.3580(c)(3)(i), 1.65.

(k) "Investigation" means the Bureau's investigation of information contained in the Application and related pleadings, as detailed herein;

(l) "Licensee" means Cadena Radial Remanente, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(m) "LPFM Assignment and Transfer of Control Rules" means section 73.865(d) of the Rules, previously section 73.865(e);[41];

(n) "Mision" means Cadena Radial Mision Y Vision, licensee of LPFM station KRAQ-LP, Rancho Mirage, California.

(o) "Parties" means Licensee and the Bureau;

(p) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations; and

(q) "Violations" means the Licensee's noncompliance with sections 73.865(e), 73.865(d), 73.860(d), 73.3580(c)(3)(i), and 1.65 of the Rules.

III. BACKGROUND

3. The LPFM Assignment and Transfer of Control Rules provide that sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change.[42] The Cross-Ownership Rule provides that a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of a LPFM station in which the party also holds an interest.[43]

4. Section 73.3580(c)(3)(i) of the Rules requires the broadcast of on-air announcements for applications for the renewal of LPFM licenses.[44] Section 1.65 of the Rules requires that applicants maintain the accuracy of their applications during their pendency, and promptly provide updated or corrected information as necessary.[45]

5. Edith Gonzalez Werner (Werner) and Delia Gloria Gonzalez (Gonzalez) were common directors of, and thus held an attributable interest in, CRR and Mision, between 2018 and 2021, with each holding a 33.3% voting interest in the two licensees. Furthermore, CRR failed to file *pro forma* transfer of control applications following its sudden majority board changes when: (1) Werner and Gonzalez became directors of CRR in 2018; and (2) when Werner and Gonzalez were replaced as directors in 2021. CRR also failed to provide on-air local public notice of the Application, and failed to amend the Station's pending construction permit application when it changed its three-member board of directors in 2015 to replace Anna Serna with Ramon Reynaga.[46]

6. Because of the foregoing compliance issues, the Bureau staff commenced the Investigation and suspended processing of the Application. The Parties have negotiated the terms of this Consent Decree to terminate the Bureau's Investigation.

7. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order

[41] *See Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12542, para. 56 (2019) (redesignating 47 CFR § 73.865(e) as 47 CFR § 73.865(d)).

[42] 47 CFR § 73.865(d), previously 47 CFR § 73.865(e).

[43] 47 CFR § 73.860(d).

[44] *Id.* § 73.3580(c)(3)(i).

[45] *Id.* § 1.65(a).

[46] *See* Application File No. BNPL-20131113ABE.

to conserve such resources, resolve the matter, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. AGREEMENT

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

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

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

11. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee, provided that Licensee satisfies all of its obligations under this Consent Decree. In the event that Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

12. **Admission of Liability**. Licensee stipulates that the actions described in paragraph 5 of this Consent Decree violated sections 73.865(e), 73.865(d), 73.860(d), 73.3580(c)(3)(i), and 1.65 of the Rules.

13. **Civil Penalty**. Licensee agrees to make the Civil Penalty payment to the United States Treasury in the amount of nine thousand dollars ($9,000), within thirty (30) calendar days of the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[47]

14. **Payment**. Licensee shall send electronic notification of payment to Alexander Sanjenis and Olivia Hill at Alexander.Sanjenis@fcc.gov and Olivia.Hill@fcc.gov on the date payment is made. Payment shall be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[48] or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[49]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at (202) 418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated.

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

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

[49] 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.

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

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option.

- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

15. **Event of Default**. Licensee agrees that an Event of Default shall occur upon the failure by Licensee to pay the full amount of the Civil Penalty by the Due Date specified in this Consent Decree.

16. **Interest Charges for Collection, and Acceleration of Maturity Date**. Licensee agrees that 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 Licensee.

17. **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 Licensee's obligations related to compliance with Licensee's compliance with the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

18. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the LPFM Assignment and Transfer of Control Rules and

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

the Cross-Ownership Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below, 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 LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule;

(ii) contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership 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 LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership 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**. Licensee agrees that it shall submit Compliance Reports to the Commission 90 calendar days after the Effective Date and thereafter annually on the anniversary of the Effective Date up to and including the Termination Date, as that term is defined below. Each Compliance Report shall include a detailed description of Licensee's efforts during the preceding period to comply with the terms and conditions of this Consent Decree and the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, stating that the Compliance Officer has personal knowledge that Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth below.

(d) 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.[51]

(e) If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(f) All Compliance Reports shall be submitted via email to: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov.

19. **Reporting Noncompliance**. Licensee agrees that it shall report any noncompliance with the LPFM Assignment and Transfer of Control Rules and the Cross-Ownership Rule and with the terms and conditions of this Consent Decree within 15 calendar days after discovery of such noncompliance at any station of which Licensee is or becomes the licensee. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov.

20. **Termination Date**. The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate thirty-six (36) months after grant of the Application, *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations under the terms of the Consent Decree. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with the terms of the Consent Decree, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for an additional period of time as the Bureau deems appropriate.

21. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 13 of this Consent Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

22. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition, or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[52] relating to the Consent Decree or Adopting Order.

[51] 47 CFR § 1.16.

[52] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

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

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

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

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

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

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

29. **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.

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

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: September 30, 2024

CADENA RADIAL REMANENTE

By: _____
Arturo Gonzalez, Board Member

Date: _____

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

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MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

CADENA RADIAL REMANENTE

By: _____
Arturo Gonzalez, Board Member

Date: 9-26-24

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-960
Released: September 18, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON REQUEST REGARDING THE NEUTRALITY OF THE LOCAL NUMBER PORTABILITY ADMINISTRATOR AND FOR CONSENT TO TRANSFER OF CONTROL

CC Docket No. 95-116
WC Docket Nos. 07-149, 09-109

Comment Date: October 3, 2024
Reply Comment Date: October 18, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on a request from iconectiv, LLC (iconectiv) and Koch Equity Development LLC (KED) (together, the Requesting Parties) to confirm that, post-close of a pending transition in which iconectiv will become wholly-owned by a to-be-formed subsidiary of KED, iconectiv will meet the Commission's neutrality requirements for the Local Number Portability Administrator (LNPA), as set forth in the Commission's rules.[1] To the extent necessary, iconectiv and KED also request approval for the LNPA to be indirectly acquired by KED.[2] Applicants also seek Commission consent to terminate the existing Ericsson-FP-Icon Voting Trust at close of the KED transaction, as neither Ericsson nor FP-Icon will have any equity interests in iconectiv post-close.[3]

As acknowledged by the Requesting Parties, TNS-TransLine, LLC, an indirect subsidiary of KED, has "*de minimis*" Telecommunications Service Provider operations.[4] The Requesting Parties state that the Commission has "long held that such *de minimis* [Telecommunications Service Provider] activities do not present a risk of undue influence on the numbering administrator."[5] "To further ensure iconectiv's neutrality," KED proposes, for so long as iconectiv serves as the LNPA, to adhere to an LNPA Code of Conduct similar to the Code of Conduct currently applicable to iconectiv's ownership.[6] Similarly, KED states that it will establish a voting trust, with independent trustees, to hold the equity of

[1] Request of iconectiv and Koch Equity Development To Confirm Neutrality and, if Necessary, For Consent to Transfer of Control, WC Docket No. 07-149, et al. (filed August 16, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/1081698343505 (Request) *referencing* 47 CFR § 52.12(a) at 1.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 9.

[5] *Id.*

[6] *Id.* at 14.

iconectiv so long as the company is operating as the LNPA.[7]

Pursuant to section 1.41 and 1.51 of the Commission's rules, 47 CFR §§ 1.41, 1.51, interested parties may file comments on or before the date indicated.

Filing Requirements. All filings must refer to **CC Docket No. 95-116 and WC Docket Nos. 07-149, 09-109**. Comments may be filed using the Commission's Electronic Comment Filing System.

- Electronic Filers: Comments may be filed electronically using the Internet 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).

Ex Parte Rules. This proceeding 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 presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be

[7] *Id.* at 16. Drafts of KED's proposed LNPA Code of Conduct and Voting Trust Agreement are attached to the Request as Exhibits B and C, respectively.

[8] *See* 47 CFR §§ 1.1200 *et seq.*

filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).[9] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Contact Information. For further information, please contact Edward Krachmer, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1525 or by email at Edward.Krachmer@fcc.gov.

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[9] *Id.* § 1.1206(b).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-961
Released: September 18, 2024

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

WC Docket No. 21-93

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]

Emergency Connectivity Fund Program
WC Docket No. 21-93

Granted[3]

Ministerial and/or Clerical Errors – Invoicing[4]

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[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 54.1718(a)(2) of the Commission's rules provide that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Section 54.1718(a)(3) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 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] We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the equipment/services or the petitioners' applications. We also waive section 54.1711(d) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.1711(d) (codifying the invoice filing deadline rule).

[4] *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 38 FCC Rcd 330, 334-35, paras. 7-9 (WCB 2023) (*Accomack County Public School Order*) (granting a waiver where the E-Rate invoice filer entered the wrong application or funding request number on the request for reimbursement (i.e., BEAR or SPI form). Consistent with the Commission's decision to adopt the similar appeal and waiver rules

(continued….)

Step CG (Duval County School District), FL, Application Nos. ECF202112344, ECF202208782, Request for Waiver, WC Docket No. 21-93 (filed May 31, 2024)

Waiver of the ECF Invoice Filing Deadline[5]

Nuasin Next Generation Charter School (a/k/a Metropolitan Lighthouse Charter School), NY, Application No. ECF202112945, Request for Waiver, WC Docket No. 21-93 (filed Apr. 16, 2024)

Shelby County School District, TN, Application No. ECF202113048, Request for Waiver, WC Docket No. 21-93 (filed Mar. 18, 2024)

St. John the Baptist School, NY, Application No. ECF202113261, Request for Waiver, WC Docket No. 21-93 (filed Jan. 24, 2024)

St. Mary's School, NY, Application No. ECF202109561, Request for Waiver, WC Docket No. 21-93 (filed Jan. 24, 2024)

Toppenish School District, WA, Application No. ECF202107491, Request for Waiver, WC Docket No. 21-93 (filed Mar. 6, 2024)

Tucson Unified School District, AZ, Application No. ECF222120815, Request for Waiver, WC Docket No. 21-93 (filed May 17, 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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(Continued from previous page)
that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve this petition for waiver of the Emergency Connectivity Fund program rules.

[5] *See, e.g., Requests for Waiver by Bluum USA Inc et al.; Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 24-109, paras. 6, 9 (WCB Feb. 6, 2024) (*Bluum USA Inc. Order*) (extending the ECF program's invoice filing deadline for first and second application filing window funding requests by 60 days because the applicant or service provider was unable to timely file due to personnel changes or administrative issues). We waive the invoice filing deadline for the petitioners' Window 1 and Window 2 ECF funding requests and provide 60 days from the release date of this Public Notice to allow the petitioners time to file their requests for reimbursement with USAC. To the extent the petitioner is also seeking a waiver of the service delivery deadline, we deny such requests. We remind petitioners that June 30, 2024 was the final service delivery date for the ECF program and the Commission cannot waive or extend this date to provide any petitioner with additional time to purchase eligible equipment and/or services beyond this statutorily set date.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-962
Released: September 18, 2024

APPLICATION OF T-MOBILE US, INC., NEXTEL WEST CORP., AND LB LICENSE CO, LLC FOR LICENSE ASSIGNMENT

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. 0010923038

In connection with the Commission's review of an application for a license assignment from LB License Co, LLC to Nextel West Corp., which is a wholly owned indirect subsidiary of T-Mobile US, Inc. (collectively, the Applicants), the Commission is examining information contained in the biannual Numbering Resource Utilization and Forecast (NRUF) reports filed by wireless telecommunications carriers,[1] carrier-specific local number portability (LNP) data related to wireless telecommunications carriers, and further disaggregated monthly carrier-specific local number portability data (Carrier-to-Carrier LNP Data) related to wireless telecommunications carriers. These data may assist the Commission in assessing the competitive effects of the transaction. Accordingly, the NRUF reports for all wireless telecommunications carriers for December 2023 and the monthly LNP reports for all wireless telecommunications carriers for January 2023 through December 2023 are being placed in the record in these proceedings, subject to the provisions of a protective order.[2]

Section 251 of the Communications Act grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[3] To monitor better the way numbering resources are used within the NANP and allocate NANP resources efficiently, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.[4] LNP data are collected by the LNP Administrator and provided to the Commission.

The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C. § 552(b)(4).[5] The NRUF and LNP reports are being placed into the record subject to the provisions of a protective order. As such, the NRUF and LNP data will not be available to the public except pursuant to the terms of the protective order, as outlined below.

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[1] 47 CFR §§ 1.907, 52.5.

[2] A protective order will be adopted shortly.

[3] 47 U.S.C. § 251.

[4] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7578-79, para. 5 (2000) (*Numbering Report and Order*).

[5] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

Persons seeking to review the NRUF and LNP data may do so only for purposes of participating in this proceeding. Pursuant to the protective order, outside persons participating or intending to participate in the proceeding who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the protective order may review the NRUF and LNP data. We emphasize that persons seeking to review the NRUF and LNP data must have adequate protections in place to prevent improper use or disclosure of the information.

Affected parties have until **September 30, 2024** to oppose the limited disclosure of their NRUF and LNP data pursuant to the protective order.[6] In addition, affected parties will have five business days after the filing of an acknowledgment of confidentiality to object to the release of their data to a particular person who requests permission to review it.

Under the Commission's current procedures for the submission of filings and other documents,[7] submissions in this matter may be filed electronically through the Commission's Universal Licensing System (ULS), referencing the file number set forth above.

- Electronic Filers: Comments may be filed electronically using the internet by accessing ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. **All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission**.
    - 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, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, D.C. 20554.

One copy of each filing must be delivered electronically, by email, or if delivered as paper copy, by messenger delivery, commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Susannah Larson, Wireless Telecommunications Bureau, at Susannah.Larson@fcc.gov; (2) Catherine Matraves, Office of Economics and Analytics, at Catherine.Matraves@fcc.gov; and (3) Joel Rabinovitz, Office of General Counsel, at Joel.Rabinovitz@fcc.gov. Any submission emailed to these individuals should include in the subject line of the email, for example: (1) ULS File No. 0010923038; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., ULS File No. 0010923038, Widget Corp., NRUF Objection).

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

This action is taken pursuant to sections 4(i) and 310(d) of the Communications Act, 47 U.S.C. §§ 154(i), 310(d), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

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[6] If disclosure is opposed, the procedures set forth in 47 CFR § 0.461(i) shall apply.

[7] *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

For further information regarding this proceeding, please contact Susannah Larson, Susannah.Larson@fcc.gov; Catherine Matraves, Catherine.Matraves@fcc.gov; or Joel Rabinovitz, Joel.Rabinovitz@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Application of T-Mobile US, Inc., Nextel West Corp., and LB License Co, LLC for License Assignment	)))	ULS File No. 0010923038

NRUF/LNP PROTECTIVE ORDER

Adopted: September 18, 2024 **Released: September 18, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In connection with the Commission's review of the transactions at issue in this proceeding, the Commission is examining information contained in the Numbering Resource Utilization and Forecast (NRUF) reports filed by carriers engaged in the provision of wireless telecommunications services[1] (Wireless Telecommunications Carriers) and disaggregated, carrier-specific local number portability (LNP) data related to Wireless Telecommunications Carriers. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision. We also anticipate that parties participating in the proceeding may seek to review this data.

2. Section 251 of the Communications Act of 1934, as amended, grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[2] In order to better monitor the way numbering resources are used within the NANP and efficiently allocate NANP resources, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements—the NRUF report.[3] LNP data are collected by the LNP Administrator and provided to the Commission. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4).[4]

3. While we are mindful of the highly sensitive nature of such information, we are also mindful of the right of the public to participate in this proceeding in a meaningful way. Therefore, consistent with past practice,[5] the NRUF reports and LNP data will not be available to the public except pursuant to the terms of this NRUF/LNP Protective Order; we will make such information available to participants in this proceeding, but limit such access to their Outside Counsel of Record and Outside Consultants whom they retain to assist them in this proceeding, and their Outside Counsel's and Outside

[1] 47 CFR §§ 1.907, 52.5.

[2] 47 U.S.C. § 251.

[3] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7578-79, para. 5 (2000) (*Numbering Report and Order*).

[4] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

[5] *See, e.g.*, *AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, Protective Order, 26 FCC Rcd 6031 (WTB 2011); *AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Protective Order, 24 FCC Rcd 13915 (WTB 2009).

Consultants' employees. We conclude that the procedures we adopt in this NRUF/LNP Protective Order give appropriate access to the public while protecting particularly competitively sensitive information from improper disclosure, and that the procedures we adopt thereby serve the public interest.[6]

4. *Definitions.* As used herein, capitalized terms not otherwise defined in this NRUF/LNP Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix A hereto.

"Competitive Decision-Making" means that a person's activities, association, or relationship with any of his or her clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with a Wireless Telecommunications Carrier.

"NRUF/LNP Confidential Information" means the NRUF reports, the data contained in those reports, the LNP data, and any information derived from the reports or the data that is not otherwise available from publicly available sources.

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Reviewing Party" means a person who has obtained access to NRUF/LNP Confidential Information pursuant to paragraphs 5 or 7 of this NRUF/LNP Protective Order.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

5. *Procedure for Obtaining Access to NRUF/LNP Confidential Information*. Access to NRUF/LNP Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to NRUF/LNP Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and

[6] This NRUF/LNP Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the NRUF/LNP Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

conditions of this NRUF/LNP Protective Order, and file the Acknowledgment with the Commission, so that it is received at least five business days prior to such person's reviewing or having access to the NRUF/LNP Confidential Information. Each Wireless Telecommunications Carrier shall have an opportunity to object to the disclosure of its NRUF/LNP Confidential Information to any such person. A Wireless Telecommunications Carrier must file any such objection at the Commission and serve it on Counsel representing, retaining, or employing such person within five business days after that person's Acknowledgment has been filed with the Commission. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection from a Wireless Telecommunications Carrier shall not have access to that carrier's NRUF/LNP Confidential Information.[7] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to NRUF/LNP Confidential Information by the Reviewing Party until the objection is resolved.

6. *Review of NRUF/LNP Confidential Information.* A Reviewing Party shall contact Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics, or Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau, to receive instructions on how to obtain and review NRUF/LNP Confidential Information. A Reviewing Party may temporarily load onto a computer NRUF/LNP Confidential Information. Once loaded, any files containing NRUF/LNP Confidential Information shall be password protected immediately. The NRUF/LNP Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying NRUF/LNP Confidential Information) to a mobile data storage medium. All files containing NRUF/LNP Confidential Information shall be deleted from the computer as soon as practicable. The mobile storage medium containing the results shall be stored securely and a record kept of any persons given access to them.

7. *Use of NRUF/LNP Confidential Information*. Persons obtaining access to NRUF/LNP Confidential Information under this NRUF/LNP Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any NRUF/LNP Confidential Information in its decision in this proceeding, it will do so either by redacting any NRUF/LNP Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to NRUF/LNP Confidential Information under this NRUF/LNP Protective Order or by aggregating the NRUF/LNP Confidential Information such that no information of any Wireless Telecommunications Carrier (other than the Applicants) is revealed.

8. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of NRUF/LNP Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Wireless Telecommunication Carrier's own NRUF/LNP Confidential Information may also be disclosed to employees and Counsel of the carrier.

9. *Filings with the Commission*. A Reviewing Party may in any document that it files in this proceeding disclose NRUF/LNP Confidential Information only if it complies with the following

[7] An objection ordinarily will first be ruled upon by the Wireless Telecommunications Bureau (Bureau). If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party.

procedure. The party shall file in the Commission's Universal Licensing System (ULS) as confidential one copy of the filing containing NRUF/LNP Confidential Information (the "NRUF/LNP Confidential Filing") and an accompanying cover letter. The cover or first page of the NRUF/LNP Confidential Filing and each page of the NRUF/LNP Confidential Filing that contains or discloses NRUF/LNP Confidential Information must be clearly marked "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 before the Federal Communications Commission." The cover letter shall also contain this legend. The NRUF/LNP Confidential Filing will not be placed in the Commission's public file. The party shall also submit in ULS a copy of the filing in redacted form, i.e., containing no Confidential Information (the "Redacted NRUF/LNP Confidential Filing").[8] The Redacted NRUF/LNP Confidential Filing and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted NRUF/LNP Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted NRUF/LNP Confidential Filing shall have the same pagination as the NRUF/LNP Confidential Filing from which it is derived. To the extent that any page of the NRUF/LNP Confidential Filing contains any type of Confidential Information and non-confidential information, only the Confidential Information (of whatever type) shall be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. One copy of each Redacted NRUF/LNP Confidential Filing and the accompanying cover letter must also be sent by email to Susannah Larson, Susannah.Larson@fcc.gov. Parties should not provide courtesy copies of pleadings containing NRUF/LNP Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

10. *Non-Disclosure of NRUF/LNP Confidential Information*. Except as provided under this NRUF/LNP Protective Order, NRUF/LNP Confidential Information shall not be disclosed further.

11. *Protection of Stamped NRUF/LNP Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to NRUF/LNP Confidential Information is strictly limited as prescribed in this NRUF/LNP Protective Order. A Reviewing Party shall further have the obligation to ensure that NRUF/LNP Confidential Information is used only as provided in this NRUF/LNP Protective Order.

12. *Requests for Additional Disclosure*. If any person requests disclosure of NRUF/LNP Confidential Information outside the terms of this NRUF/LNP Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

13. *Client Consultation*. Nothing in this NRUF/LNP Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of NRUF/LNP Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose NRUF/LNP Confidential Information.

14. *No Waiver of Confidentiality*. Disclosure of NRUF/LNP Confidential Information as provided herein by any person shall not be deemed a waiver by any affected party of any privilege or entitlement to confidential treatment of such NRUF/LNP Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use NRUF/LNP Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of NRUF/LNP Confidential Information shall not be deemed a waiver of any privilege or entitlement.

[8] If a party is not able to submit filings via ULS, it must submit two copies each of the NRUF/LNP Confidential Filing and Redacted NRUF/LNP Confidential Filing, along with their respective cover letters, to the Office of the Secretary, Federal Communications Commission, via first-class or overnight U.S. Postal Service mail addressed to 45 L Street, NE, Washington, DC 20554, or via commercial courier (any deliveries not by U.S. Postal Service) to 9050 Junction Drive, Annapolis Junction, MD 20701.

15. *Subpoena by Courts, Departments, or Agencies*. If a court or a federal or state department or agency issues a subpoena for or orders the production of NRUF/LNP Confidential Information that a party has obtained under terms of this NRUF/LNP Protective Order, such party shall promptly notify the Commission and each affected Wireless Telecommunications Carrier of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Commission and each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production prior to the production or disclosure of any NRUF/LNP Confidential Information.

16. *Violations of NRUF/LNP Protective Order*. Should a Reviewing Party violate any of the terms of this NRUF/LNP Protective Order, such Reviewing Party shall immediately convey that fact to the Commission. Further, should such violation consist of improper disclosure of NRUF/LNP Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this NRUF/LNP Protective Order, including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding. Nothing in this NRUF/LNP Protective Order shall limit any other rights and remedies available to the affected Wireless Telecommunications Carriers at law or in equity against any person using NRUF/LNP Confidential Information in a manner not authorized by this NRUF/LNP Protective Order.

17. *Termination of Proceeding*. The provisions of this NRUF/LNP Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Commission all NRUF/LNP Confidential Information and all copies of the same. No material whatsoever containing NRUF/LNP Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this NRUF/LNP Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain NRUF/LNP Confidential Information, and one copy of orders issued by the Commission or Bureau that contain NRUF/LNP Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to the Commission not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of NRUF/LNP Confidential Information shall not be construed to apply to the Commission or its staff.

18. *Questions*. Substantive questions concerning this Protective Order should be addressed to Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics; Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau; and Joel Rabinovitz, Joel.Rabinovitz@fcc.gov.

19. *Authority*. This Order is issued pursuant to sections 4(i), 214, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 310(d), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Acknowledgment of Confidentiality

ULS File No. 0010923038

I hereby acknowledge that I have received and read a copy of the foregoing NRUF/LNP Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the NRUF/LNP Protective Order and that I shall not disclose or use NRUF/LNP Confidential Information except as allowed by the NRUF/LNP Protective Order.

I acknowledge that a violation of the NRUF/LNP Protective Order is a violation of an order of the Federal Communications Commission. I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of the Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the NRUF/LNP Protective Order limits any other rights and remedies available at law or in equity against me if I use NRUF/LNP Confidential Information in a manner not authorized by the NRUF/LNP Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the NRUF/LNP Protective Order is due solely to my capacity as Outside Counsel or Outside Consultant to a Participant or as a person described in paragraph 7 of the foregoing NRUF/LNP Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that NRUF/LNP Confidential Information is not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of NRUF/LNP Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of NRUF/LNP Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the NRUF/LNP Protective Order.

Executed this ___ day of _____, 20___.

_____

[Name]

[Position]

[Address]

[Telephone]

Federal Communications Commission
Washington, D.C. 20554

September 19, 2024

DA 24-964

SMALL ENTITY COMPLIANCE GUIDE

Accessibility of User Interfaces, and Video Programming Guides and Menus

FCC 24-79
MB Docket No. 12-108
Released July 19, 2024

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

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

1-888-CALL-FCC (1-888-225-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

Closed captioning displays the audio portion of a television program as text on the screen, providing access to news, entertainment, and information for individuals who are deaf and hard of hearing. Pursuant to the Television Decoder Circuitry Act of 1990 (TDCA),[1] the Federal Communications Commission (Commission) adopted standards for the display of closed captions on digital television receivers which enable users to customize caption display by changing the font, size, color, and other features of captions. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),[2] the Commission adopted display standards for other video devices, specifically for apparatus designed to receive or play back video programming transmitted simultaneously with sound.[3] Despite these standards, consumer groups have described the difficulties consumers who are deaf and hard of hearing face in accessing closed captioning display features.

In response to consumer concerns, the Commission issued a *Second Further Notice of Proposed Rulemaking* in 2015 that proposed to adopt rules that would require manufacturers and multichannel video programming distributors (MVPDs) to ensure that consumers are able to readily access user display settings for closed captioning.[4] The Media Bureau has since sought comment multiple times since the release of the *Second Further Notice of Proposed Rulemaking*. Most recently, in 2024, the Media Bureau sought comment on a joint proposal from NCTA – the Internet and Television Association and a coalition of consumer groups to make closed caption display settings readily accessible.[5] In the *Third Report and Order*, the Commission: (1) affirmed its authority under the TDCA to adopt the new rules; (2) adopted the requirement that closed captioning display settings must be "readily accessible" and outlined the factors used to make this determination; (3) found that the public interest benefits outweigh the costs of the new rules; (4) specified the entities and devices covered by the rule; (5) discussed the availability of waivers or exemptions based on achievability and technical feasibility; and (6) established a compliance deadline for the new rules. The Commission takes these steps to alleviate the difficulties individuals with disabilities have had accessing the closed captioning display settings on televisions and other video devices, furthering our efforts to ensure meaningful access to closed captioning.

II. COMPLIANCE REQUIREMENTS

A. Readily Accessible Requirement (47 CFR § 79.103(e))

The *Third Report and Order* requires covered manufacturers and MVPDs to make closed captioning display settings readily accessible to consumers on covered apparatus. The Commission affords covered entities flexibility in how they meet this obligation and will use four factors to determine whether the closed captioning display settings are "readily accessible"— proximity, discoverability, previewability, and consistency and persistence. Failure to comply with any of these factors may be deemed a violation of the Commission's rules.

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[1] Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

[2] 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).

[3] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-154, 27 FCC Rcd 787 (2012).

[4] *See Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, MB Docket No. 12-108, 30 FCC Rcd 13914, 13932-35, paras. 33-40 (2015).

[5] *Media Bureau Seeks Comment on Joint Closed Captioning Display Settings Proposal*, Public Notice, MB Docket No. 12-108, DA 24-276 (Mar. 19, 2024).

- *Proximity*. The closed captioning display settings must be available in one area of the settings that is accessed via a means reasonably comparable to a button, key, or icon.
- *Discoverability*. To ensure that closed captioning display settings are "discoverable," covered entities must:
    1. Work with consumers and disability groups to test whether closed captioning display settings can be easily found.
    2. Make good faith efforts to correct problems identified in the testing process.
    3. Train customer-facing employees on how to advise customers on closed captioning display settings.
- *Previewability*. Viewers must be able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings.
- *Consistency and Persistence*. The "consistency and persistence" factor requires covered entities to:
    1. For MVPDs that provide navigation devices, expose closed caption display settings via an application programming interface (API) or similar method that an over-the-top application provider can use upon launch of their application on the device. The API or similar method must enable the application provider to use the device-level caption settings for its own content, if it chooses, and covered entities must notify application developers about the API or similar method through any reasonable means.
    2. For MVPDs that provide their own video programming application hosted on third-party devices, utilize the operating system-level closed caption settings of the apparatus upon launch of the application on the device.
    3. For manufacturers, ensure that the apparatus they manufacture makes closed caption settings available to applications via an API or similar method.

B. Covered Devices and Entities (47 U.S.C § 303(u))

The new rules apply to manufacturers as well as MVPDs for devices covered by section 303(u) of the Communications Act of 1934, as amended, which includes apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size.[6]

The rules do not apply to third-party, pre-installed applications, or to equipment manufactured prior to the compliance deadline. In addition, the following devices are **not** subject to the new rules:

- Apparatus exempt from the requirement to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, such as display-only video monitors and professional or commercial equipment.
- Equipment for which the requirement has been determined to be unachievable or technically infeasible.
- Equipment for which the requirement has been waived, such as apparatus primarily designed for purposes other than receiving or playing back video programming.

[6] 47 U.S.C. § 303(u).

C. Waivers and Exemptions (47 CFR § 79.103(e)

Covered entities must comply with the new "readily accessible requirement" only if doing so is "achievable" for apparatus that use a picture screen less than 13 inches in size, and only if "technically feasible" for all apparatus.[7] Consistent with Commission precedent and the CVAA,[8] the waiver and exemption procedures based on achievability and technical feasibility apply as follows:

- *Achievability*. Compliance is "achievable" if it can be obtained "with reasonable effort or expense," which will be determined on a case-by-case basis based on the following factors:

    1. The nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question;
    2. The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the deployment of new communications technologies;
    3. The type of operations of the manufacturer or provider; and
    4. The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features and that is offered at different price points.

    Covered apparatus that use a picture screen less than 13 inches in size must comply with the new "readily accessible" requirement only if doing so is "achievable."

    If a covered entity believes that compliance with the rule is not achievable, it may either seek a determination from the Commission before manufacturing or importing the apparatus or raise achievability as a defense in the event of a complaint or Commission enforcement action.

- *Technical Feasibility*. To demonstrate technical infeasibility, a covered entity must show that changes to the design of the apparatus to make closed captioning display settings readily accessible are not physically or technically possible, not just difficult to implement.

    Covered entities can seek a determination from the Commission before manufacturing or importing the product or raise a defense of technical infeasibility in the event or a complaint or Commission enforcement action.

D. Compliance Deadline

Covered entities are afforded 24 months to implement and comply with the requirements of the *Third Report and Order* (until August 17, 2026), or until after the Office of Management and Budget completes its review of any new or modified information collection requirements, whichever is later. The Commission however encourages compliance with the rules as soon as it is technically feasible for covered entities to do so.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

Covered entities are required to notify application developers by any reasonable means about the API or similar method by which covered MVPDs providing navigation devices must expose closed captioning display settings. More generally, in the event that an allegation of non-compliance arises against an entity, an entity must have the information it will need to demonstrate how it has complied with the applicable requirements. Similarly, MVPDs and manufacturers that seek exemptions and waivers based on the requirement not being technical feasible, and/or not achievable, must have relevant records and may make a filing with the Commission to substantiate such claims.

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[7] 47 CFR § 79.103(e).

[8] 47 U.S.C. § 303(u).

IV. IMPLEMENTATION DATE

The *Third Report and Order* is effective as of September 16, 2024. The compliance deadline for MVPDs and manufacturers to implement the adopted requirements is after the Office of Management and Budget completes its review of any new or modified information collection requirements, or August 17, 2026 (24 months after Federal Register publication), whichever is later. The Media Bureau will publish a Public Notice in the Federal Register announcing the compliance date and revising 47 CFR § 79.103(e) of the Commission's rules.

V. INTERNET LINKS

A copy of the *Third Report and Order* is available at: https://docs.fcc.gov/public/attachments/FCC-24-79A1.pdf.

A copy of the Federal Register Summary of the *Third Report and Order* is available at: https://www.govinfo.gov/content/pkg/FR-2024-08-15/pdf/2024-17479.pdf.

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 -965
Released: September 19, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON NECA 2025 MODIFICATION OF THE AVERAGE SCHEDULE COMPANY UNIVERSAL SERVICE HIGH COST LOOP SUPPORT FORMULA

WC Docket Nos. 05-337 and 10-90

Comment Date: October 21, 2024
Reply Comment Date: November 5, 2024

On August 28, 2024, the National Exchange Carrier Association, Inc. (NECA) filed its 2025 Modification of the Average Schedule Universal Service High Cost Loop Support Formula.[1] The proposed formula, if approved, would take effect on January 1, 2025, and remain in effect through December 31, 2025. The Wireline Competition Bureau seeks comment on the proposed formula.

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.

[1] NECA 2025 Modification of the Average Schedule Universal Service High-Cost Loop Support Formula, WC Docket No. 05-337 (filed Aug. 28, 2024).

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

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau, e-mail: Abdel-Hamid.Eqab@fcc.gov; and

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, e-mail: Charles.Tyler@fcc.gov.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.[2]

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[3] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau at Abdel-Hamid.Eqab@fcc.gov, (202) 418-7400.

- FCC -

[2] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[3] 47 CFR §§ 1.1200 *et seq.*

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	09-197
	)	
	)	

ORDER

Adopted: September 20, 2024 **Released: September 20, 2024**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we approve the request of Cebridge Telecom WV, LLC dba Suddenlink (Company) to relinquish its Eligible Telecommunications Carrier (ETC) designation in West Virginia.[1] The Company has surrendered its awarded Rural Digital Opportunity Fund (RDOF) support where it was designated as an ETC, and the Wireline Competition Bureau (Bureau) has announced that the unserved areas within the authorized area have been removed from the Commission's Broadband Funding Map and are now eligible for funding through other federal and state programs.[2] Because the Company no longer receives high cost support for this area, it is seeking to relinquish its ETC designation.

2. To obtain universal service funds, a carrier must be designated as an ETC under section 214(e)(1) of the Communications Act, as amended (Act).[3] Although section 214(e)(2) grants states the primary role in designating ETCs, section 214(e)(6) provides that the Federal Communications Commission should designate ETCs in limited circumstances, i.e., where the carrier is not subject to the jurisdiction of a state.[4] Section 214(e)(4) of the Act provides that in the case of a carrier designated as an ETC by the Commission pursuant to section 214(e)(6), the Commission shall permit an ETC to relinquish its designation "in any area served by more than one [ETC]" so long as "the remaining [ETCs] ensure that all customers served by the relinquishing carrier will continue to be served."[5] Consistent with this statutory provision, once the requesting ETC makes the required showing under section 214(e)(4), the Commission must grant the request for relinquishment.

3. On April 19, 2024, the Company notified the Bureau that it was relinquishing the Company's one RDOF-support census block group in West Virginia to ensure that the unserved areas will be eligible

[1] *See* Petition of Cebridge Telecom WV, LLC dba Suddenlink Communications to Relinquish its Eligible Telecommunications Carrier Designation, WC Docket 09-197 (filed June 10, 2024) (Relinquishment Petition). *See Telecommunications Carriers Eligible for Universal Service Support*, Order, 36 FCC Rcd 9384 (WCB 2021) (designating the Company, among others, as an ETC for the purpose of becoming eligible to receive RDOF support that it had been authorized to receive in exchange for its commitment to one census block group (CBG) in West Virginia); *Rural Digital Opportunity Fund Support Authorized for 95 Winning Bids*, Public Notice, 37 FCC Rcd 9317, 9327-28, 9331 Attach. A (2022) (authorizing the Company to receive RDOF support in West Virginia).

[2] *See Wireline Competition Bureau Announces Certain RDOF Census Block Groups Are Eligible for Other Funding Programs*, Public Notice, WC Docket Nos. 10-90 et al., AU Docket No. 20-34, DA 24-449 (WCB May 10, 2024).

[3] 47 U.S.C. § 214(e)(1).

[4] *Id*. § 214(e)(6).

[5] *Id*. § 214(e)(4).

to receive federal funding through the BEAD Program and other federal or state funding programs.[6] On May 10, 2024, the Bureau released a public notice stating that the unserved locations in West Virginia are eligible for other funding programs.[7] On June 10, 2024, the Company filed a petition to relinquish its ETC designation in its RDOF eligible areas in West Virginia.[8]

4. In its Relinquishment Petition, the Company states that it has surrendered its awarded RDOF support in the West Virginia census block group where it was designated as an ETC and that it has no customers purchasing supported services in West Virginia.[9] The Company further states that based on its review of publicly available information, "at least" 12 other ETCs operate in the subject CBG and offer Lifeline service to eligible consumers in the area.[10] Accordingly, the Company asserts, it need not provide notice to other ETCs in the CBG to permit them to purchase or construct facilities to ensure continued service for customers in the CBG.[11] Based on these circumstances, we conclude that it is appropriate to grant the Company's petition to relinquish its ETC designation in the designated service area.

5. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(4), and the authority delegated in sections 0.91 and 0.291 of the Commission's Rules, 47 CFR §§ 0.91, 0.291, the Petition of Cebridge Telecom WV, LLC dba Suddenlink for Relinquishment of its Eligible Telecommunications Carrier Designation in West Virginia is GRANTED and RELINQUISHED.

6. IT IS FURTHER ORDERED that Cebridge Telecom WV, LLC dba Suddenlink SHALL TRANSMIT a copy of this order to the Universal Service Administrative Company (USAC).

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[6] *See* Relinquishment Petition at Exh. B (Letter from Cristina Chou, Vice President, Federal Affairs, Altice USA, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket Nos. 10-90 et al., AU Docket No. 20-34 (Apr. 19, 2024)). The Bureau confirmed receipt of the letter and acknowledged that the unserved areas would be removed from the FCC's Broadband Funding Map. *See id*. at Exh. C (Letter from Trent Harkrader, Chief, Wireline Competition Bureau, FCC, to Cristina Chou, Vice President, Federal Affairs, Altice USA, Inc. (Apr. 24, 2024)).

[7] *See* Wireline Competition Bureau Announces Certain RDOF Census Block Groups Are Eligible for Other Funding Programs, Public Notice, WC Docket Nos. 10-90 et al., AU Docket No. 20-34, DA 24-449 (WCB rel. May 10, 2024).

[8] *See generally* Relinquishment Petition*; BroadLife ETC Designation Order,* 36 FCC Rcd 9384.

[9] *See* Relinquishment Petition at 4-5.

[10] *See id*. at 5; *id*. at Exh. E.

[11] *See* Relinquishment Petition at 5 and n.18 (citing *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 37 FCC Rcd 14859, 14860-61, para. 5 (WCB 2022); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 29 FCC Rcd 14372, 14372-73, para. 3 (WCB 2014)).

7. 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

Bryan P. Boyle
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

PUBLIC NOTICE

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

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

DA No. 24-967

Report No. SAT-01856 **Friday September 20, 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-20240606-00124 E S3033 Sirius XM Radio LLC
Modification 09/18/2024 -
Grant of Authority Effective Date: 09/18/2024

Nature of Service: Satellite Digital Audio Radio Service

On September 18, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Sirius XM Radio Inc. to modify the license for the SXM-7 space station to allow operations in the Wireless Communications Service (WCS) spectrum immediately adjacent to the satellite digital audio radio service (SDARS) band, 2315-2320 MHz (C Block) and 2345-2350 MHz (D Block). Additionally, Sirius XM was granted pointing flexibility for the steerable spot beams on SXM-7.

SAT-MOD-20240606-00125 E S3034 Sirius XM Radio LLC
Modification 09/18/2024 -
Grant of Authority Effective Date: 09/18/2024

Nature of Service: Satellite Digital Audio Radio Service

On September 18, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Sirius XM Radio Inc. to modify the license for the SXM-8 space station to allow operations in the Wireless Communications Service (WCS) spectrum immediately adjacent to the satellite digital audio radio service (SDARS) band, 2315-2320 MHz (C Block) and 2345-2350 MHz (D Block). Additionally, Sirius XM was granted pointing flexibility for the steerable spot beams on SXM-8.

SAT-STA-20240626-00143 E S3087 Lynk Global, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 09/19/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240723-00156 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/17/2024

On September 17, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 180 days, to operate the Galaxy 3C space station with a new Ku-band coverage area at the 94.85° W.L. orbital location. Galaxy 3C operates in the 3700-4200 MHz, 11.45-12.2 GHz (space-to-Earth), 5925-6675 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands and performs telemetry, tracking and command in the following center frequencies: 11702 MHz, 11703 MHz, 11704 MHz, 12199 MHz (space-to-Earth); 13753 MHz, 14001 MHz (Earth-to-space).

SAT-STA-20240806-00171 E S2939 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 08/15/2024

Nature of Service: Fixed Satellite Service

On August 15, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate Intelsat 33e in the 11.1-11.5 GHz (Earth-to-space) and 14.2-14.5 GHz (space-to-Earth) frequency bands with a different beam coverage at the 60.0° E.L. orbital location.

SAT-STA-20240816-00185 E S3182 Spire Global, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 09/13/2024

On September 13, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Spire Global, Inc. for a period of up to 30 days, for the Hubble 1, Hubble 2, and Hubble 3 satellites operating in the 2482.710675-2483.424 MHz band from the three "Hubble Endpoints" specified in this STA application, rather than the earth station specified in Spire's license for the Hubble satellites.

SAT-STA-20240823-00190 E S3087 Lynk Global, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 09/19/2024

Nature of Service: Mobile Satellite Service

On September 19, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Lynk Global, Inc., for a period of up to 60 days, to operate Lynk's Tower 1, 3, and 4 satellites, with orbital parameters for Lynk Tower 1 at altitudes between 479 km and 490 km and a 97.4 degrees inclination; for Lynk Tower 3 at altitudes between 513 km and 532 km and a 97.5 degrees inclination; and for Lynk Tower 4 at altitudes between 514 km and 532 km and a 97.5 degrees inclination.

SAT-STA-20240829-00194 E S2939 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/17/2024

Nature of Service: Fixed Satellite Service

On September 17, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate Intelsat 33e in the 11.1-11.5 GHz (Earth-to-space) and 14.2-14.5 GHz (space-to-Earth) frequency bands with a different beam coverage at the 60.0° E.L. orbital location.

SAT-STA-20240829-00195 E S3092 Astranis Projects USA LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/19/2024

On September 19, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Astranis Projects USA LLC, for up to 30-days, to perform telemetry, tracking and command (TT&C) functions 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.

SAT-STA-20240910-00199 E S2368 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 09/17/2024

On September 17, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to perform telemetry, tracking and command operations necessary to de-orbit Intelsat 1R from the 157.1° W.L. orbital location.

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-968
Released: September 20, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES SEPTEMBER 20, 2024 AS EFFECTIVE DATE FOR CYBERSECURITY PILOT RULES

WC Docket No. 23-234

On June 11, 2024, the Federal Communications Commission (Commission or FCC) released a *Report and Order* adopting the rules establishing the Schools and Libraries Cybersecurity Pilot Program.[1] On July 30, 2024, a summary of the *Report and Order* was published in the Federal Register, and on August 29, 2024, the adopted rules became effective with the exception of the information collection requirements included in sections 54.2004, 54.2005, 54.2006, and 54.2008 of the Commission's rules which were delayed until the Office of Management and Budget (OMB) completed its review.[2] OMB noted that the Commission will announce the effective date for the information collection requirements of sections 54.2004, 54.2005, 54.2006, and 54.2008 of the Commission's rules by publishing "a document in the Federal Register announcing the effective date for those sections after approved by [OMB] as required by the Paperwork Reduction Act."[3]

On September 13, 2024, OMB completed its review of and approved the Commission's information collection requirements in sections 54.2004, 54.2005, 54.2006, and 54.2008 of the Commission's rules for the Schools and Libraries Cybersecurity Pilot Program.[4] The OMB Control No. for this information collection is 3060-1323.[5] As required by the Paperwork Reduction Act, the FCC has published the notice in the Federal Register and announces September 20, 2024 is the effective date for sections 54.2004, 54.2005, 54.2006, and 54.2008 of the Commission's rules.[6]

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[1] *See Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Report and Order, FCC 24-63, 2024 WL 3010578 (rel. June 11, 2024) (*Report and Order*).

[2] FCC, *Schools and Libraries Cybersecurity Pilot Program*, 89 Fed. Reg. 61282 (Jul. 30, 2024) (Schools and Libraries Cybersecurity Pilot Program Final Rules).

[3] *Id*. at 61310.

[4] OMB, Notice of Office of Management and Budget Action (Sep. 13, 2024), https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202406-3060-014# (approving information collection for the FCC's Schools and Libraries Cybersecurity Pilot Program, OMB Control No. 3060-1323).

[5] *Id*.

[6] FCC, *Schools and Libraries Cybersecurity Pilot Program*, 89 Fed. Reg. 77028 (Sep. 20, 2024) (Schools and Libraries Cybersecurity Pilot Program Information Collection Final Rule) (announcing September 20, 2024 as the effective date for sections 54.2004, 54.2005, 54.2006, and 54.2008 of the Commission's rules).

For further information, please contact Tiffany Purvis, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-7400, or e-mail, Tiffany.Purvis@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

DA 24-969
Released: September 20, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES EFFECTIVE DATES OF 2024 INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES ORDER AND COMMENT DATES FOR 2024 INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES FURTHER NOTICE OF PROPOSED RULEMAKING

WC Docket Nos. 23-62, 12-375

Comments Due: October 21, 2024
Reply Comments Due: November 19, 2024

On July 22, 2024, the Commission released the *2024 IPCS Order*, implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 and adopting comprehensive reforms and revised rules governing incarcerated people's communications services (IPCS).[1] The *Order* provides that it shall be effective 60 days after publication in the Federal Register and that delegations of authority shall be effective upon publication in the Federal Register,[2] except in cases where rule amendments require approval from the Office of Management and Budget (OMB).[3]

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that the *2024 IPCS Order* was published in the Federal Register on September 20, 2024.[4] Accordingly, except for rules requiring OMB approval, all rules adopted in that Order will take effect on **November 19, 2024**. The portions of *2024 IPCS Order* delegating authority to the Bureau, the Consumer and Governmental Affairs Bureau, and the Office of Economics and Analytics are effective **September 20, 2024**.

By this Public Notice, the Bureau also announces that the *2024 IPCS Further Notice* was also published in the Federal Register on September 20, 2024.[5] The *2024 IPCS Further Notice* requires that comments and reply comments be filed no later than 30 days and 60 days after publication in the Federal

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[1] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (rel. July 22, 2024) (*2024 IPCS Order* or *Order* or *2024 IPCS Further Notice*).

[2] *2024 IPCS Order* at 308, 322, paras. 595, 641-42.

[3] *Id*. at 308, 322, paras. 595, 641. Rules subject to the Paperwork Reduction Act require Office of Management and Budget (OMB) review prior to becoming effective. Certain other existing rules will be superseded thereafter.

[4] Federal Communications Commission, *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, 89 Fed. Reg. 77244 (Sept. 20, 2024).

[5] Federal Communications Commission, *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, 89 Fed. Reg. 77065 (Sept. 20, 2024) (*2024 IPCS Further Notice Federal Register Notice*).

Register.[6] Comments in response to the *2024 IPCS Further Notice* are due no later than **October 21, 2024**, and reply comments are due no later than **November 19, 2024**. The *2024 IPCS Further Notice* and the *2024 IPCS Further Notice Federal Register Notice* contain complete filing instructions.[7]

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

For further information, please contact Simon Solemani, Attorney Advisor, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-2270 or via e-mail at Simon.Solemani@fcc.gov.

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[6] *2024 IPCS Order* at 322, para. 648.

[7] *See 2024 IPCS Further Notice* at 321-22, paras. 634-39; *2024 IPCS Further Notice Federal Register Notice*, 89 Fed. Reg. at 77069-70.

PUBLIC NOTICE

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

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DA 24-970
Released: September 20, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF SUBSIDIARIES OF METRONET HOLDINGS, LLC TO METRONET SYSTEMS HOLDINGS, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-244

Comments Due: October 4, 2024
Reply Comments Due: October 11, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Metronet Holdings, LLC (Metronet Holdings) and MetroNet Systems Holdings, LLC (MetroNet Systems) (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 Climax Telephone LLC (Climax), CMN-RUS, LLC (CMN-RUS), Jaguar Communications, LLC (Jaguar), Metro Fibernet, LLC (MFN), and Vexus Fiber, LLC (Vexus) (together, Licensees) from Metronet Holdings to MetroNet Systems.[2]

Metronet Holdings, a Delaware limited liability company, through its Licensees, provides or is authorized to provide telecommunications services, voice over Internet protocol services (VoIP), broadband services, and/or multichannel video programming services in certain portions of Arizona, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Wisconsin (Licensees' Territory).[3] The Oak Hill Investors[4] and the Cinelli Investors[5] each have negative *de facto* control, or actual control of Metronet Holdings.[6]

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

[2] Joint Application for Consent to Transfer Control of Domestic Authority Pursuant to Section 214, WC Docket No. 24-244 (filed Aug. 8, 2024) (Application). Applicants filed a supplement to the Application on September 18, 2024. Letter from Nancy J. Victory, et. al., Counsel for T-Mobile as future owner of MetroNet Systems, Catherine Wang, et al., Counsel for Metronet Holdings, MetroNet Systems, and MetroNet Licensees, to Marlene H. Dortch, Secretary, FCC, WC Docket 24-244 (filed Sept. 18, 2024) (Sept. 18 Supplement). The Applicants also filed an application for the transfer of international authorizations. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 3.

[4] Applicants state that the "Oak Hill Investors" are affiliated with Oak Hill Capital Management and include OHCP MGP V, Ltd. (MGP V) and certain funds and entities that it controls, OHCP MGP IV, Ltd. (MGP IV) and

CMN-RUS, a Delaware limited liability company, is designated as an eligible telecommunications carrier (ETC) in Indiana and provides services in Florida, Indiana, Illinois, Iowa, Kentucky, Michigan, Minnesota, Missouri, North Carolina, Ohio, and Texas.[7] Climax Telephone LLC, a Delaware limited liability company, is designated as an ETC and provides services as an incumbent LEC and a competitive LEC in Michigan.[8] Jaguar Communications, LLC, a Delaware limited liability company, is an ETC that provides services a competitive LEC in Minnesota.[9] Jaguar was approved to receive $510,587.60 in Connect America Fund Phase II Auction (CAF Phase II) support to deploy voice and broadband service to 672 locations.[10] Metro Fibernet, LLC, a Nevada competitive LEC, provides services in Arizona, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Wisconsin.[11] Vexus Fiber, LLC, (Vexus Fiber) a Delaware limited liability company, is designated as an ETC in Louisiana and is authorized to receive $8,923 in Rural Digital Opportunity Funds (RDOF) support to deploy voice and broadband services to 13 locations in Texas.[12] Vexus Fiber provides service as a competitive LEC in Arizona, Louisiana, New Mexico, and Texas.[13]

MetroNet Systems, currently a wholly owned subsidiary of Metronet Holdings, is a Delaware limited liability company that upon closing of the Proposed Transaction will be 50/50 controlled and co-managed by T-Mobile and Metronet Vexus Holdings, Inc., a Delaware corporation (Vexus Holdings) that upon closing of the Proposed Transaction will be an indirect subsidiary of KKR Metro.[14]

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certain funds and entities that it controls, and OHCP GenPar Super Holdco GP, Ltd. and certain and entities that it controls. Application at 2, n.5.

[5] The "Cinelli Investors" include the following individuals and entities: the 5 Talents Fund, LLC; Cinelli Dynasty Trust; the Albert E. Cinelli Jr. 2020 Grantor Retained Annuity Trust, Dated December 23, 2020; the Albert E. Cinelli and Sharon A. Cinelli 2012 Revocable Trust, Dated January 20, 2014; the Cheryl Cinelli-Palermo 2020 Grantor Retained Annuity Trust Dated December 23, 2020; the Janet Marie Cinelli 2020 Grantor Retained Annuity Trust Dated December 23, 2020; the John P. Cinelli 2020 Grantor Retained Annuity Trust Dated December 23, 2020; Albert E. Cinelli; the John P. Cinelli; and other family members. All of the Cinelli Investors are U.S. citizens, trusts or entities. John Cinelli and Janet Cinelli (U.S. citizens) are the Co-Trustees of the Grantor Retained Annuity Trusts. Application at 2, n.6.

[6] Application at 2.

[7] *Id*. at 10, 17, 19.

[8] *Id*.

[9] *Id*.

[10] Application at 19; Sept. 18 Supplement at 2. *See Connect America Fund Phase II Auction Support Authorized for 593 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 7081, 7111-115, Attach. A at 7-8 (Authorized Long Form Applicants and Winning Bids) (WCB 2019) (authorizing among other support recipients, Jaguar to receive CAF Phase II support in Minnesota).

[11] *Id*. at 11, 18

[12] *Id*. at 11 and 19; Sept. 18 Supplement at 2. *See Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, Public Notice, 36 FCC Rcd 14528, 14528, Attach. A at 21 (Authorized Long-Form Applicants and Winning Bids) (WCB 2021) (authorizing, among other support recipients, NTS Communications, LLC d/b/as Vexus Fiber to receive RDOF support in Texas).

[13] *Id*. at 18.

Following the closing, the board of directors of MetroNet Systems will consist of two directors appointed by T-Mobile, two directors appointed by KKR Metro, and one independent director.[15] The independent director will be designated by KKR Metro, upon consultation with, and the consent (not to be unreasonably withheld, conditioned, or delayed) of, T-Mobile.[16] T-Mobile will hold 50% of MetroNet Systems' voting membership interests and combined voting and non-voting membership interests, with Vexus Holdings, holding 50% of the voting membership interests and approximately 49.69% of the combined voting and non-voting membership interests, and current management of Metronet Holdings holding the remainder of the MetroNet Systems' non-voting membership interests.[17]

KKR Metro, a Delaware limited liability company, is indirectly owned and controlled by investment funds advised and/or managed by KKR & Co. Inc., a Delaware corporation (with its subsidiaries, KKR, a global investment firm, that is publicly traded).[18] KKR Management LLP, a Delaware limited liability partnership, is the sole shareholder of KKR & Co. Inc.'s Series I preferred stock, which confers the right, among other things, to elect and remove members of KKR & Co. Inc.'s board of directors.[19] Founders Henry Kravis and George Roberts, each of whom is a U.S. citizen, when acting together jointly control KKR Management LLP.[20]

T-Mobile, which operates as a nationwide provider of commercial mobile wireless voice, and data, and fixed wireless broadband services to about 125.9 million subscribers.[21] Applicants attest that T-Mobile does not provide the competitive local exchange carrier (LEC), incumbent LEC, or interexchange carrier telecommunications services or cable services offered by Licensees.[22] T-Mobile is indirectly held by Deutsche Telecom AG (DT), a German corporation, which, through wholly-owned subsidiaries, holds and votes the majority of T-Mobile shares.[23] Applicants state that DT will have negative control of MetroNet Systems Holdings as a result of DT's controlled subsidiary holding a 50

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[14] *Id*. at 4.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 5.

[19] *Id*.

[20] *Id*. Exhibit D (Proposed Ownership of MetroNet Systems and Licenses)- page 14.

[21] *Id*. at 4. T-Mobile has previously filed an application for the transfer of control of subsidiaries of the Lumos Fiber entities to Trailblazer Holdco, a joint venture equally owned and operated by subsidiaries of the EQT Infrastructure VI Fund and T-Mobile. *See Domestic Section 214 Application Filed for the Transfer of Control of Subsidiaries of the Lumos Entities to Trailblazer Holdco*, WC Docket No. 24-151, Public Notice, DA 24-621 (rel. June 28, 2024). Applicants state that MetroNet and Lumos do not provide services that overlap each other's incumbent LEC service areas. Sept. 18 Supplement at 1.

[22] *Id*. at 8.

[23] *Id*. at 15, Chart 9: Ownership Structure of Metronet Systems Assuming Completion of *Post-Closing Pro Forma Changes.*

percent member interest in MetroNet Systems Holdings.[24] DT is indirectly held by the Federal Republic of Germany.[25]

Pursuant to the terms of the proposed transaction, between Metronet Holdings, MetroNet Systems, KKR Metro, and various other parties, along with certain other agreements between T-Mobile and subsidiaries of KKR Metro, MetroNet Systems, which controls the Licensees today, will become a joint venture 50/50 controlled and co-managed by T-Mobile and subsidiaries of KKR Metro (the Proposed Transaction).[26] The Proposed Transaction includes two primary steps.[27] First, Metronet Holdings will liquidate and assign substantially all of its assets, including its international Section 214 authorization, to its subsidiary, MetroNet Systems.[28] Second, T-Mobile and KKR Metro, through its subsidiaries, will acquire essentially all of the outstanding equity interests in MetroNet Systems.[29]

Applicants contend that the proposed transaction would serve the public interest, convenience, and necessity.[30] Applicants assert that MetroNet Systems is managerially, technically, and financially qualified to assume control of Licensees.[31] Applicants state that the proposed transaction will "strengthen the financial position of Licensees by providing access to capital from new funding resources, enabling accelerated investment in the companies' networks and expansion of those fiber networks."[32] Applicants further assert that the proposed transaction will result in Licensees being "better able to meet the needs of their [CLEC] and [ILEC] customers, as well as to compete for new customers-driving growth that will enhance competition and make high-capacity fiber connections available to more customers in the Licensees current operating areas in Licensees Territory and other areas into which MetroNet Systems and its subsidiaries may expand in the future."[33]

Applicants do not request streamlined treatment for the domestic 214 application pursuant to section 63.03 of the Commission's rules.[34]

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application, and the associated applications for international authorizations, ITC-ASG-20240808-00133, ITC-T/C-20240808-00130, ITC-T/C-20240808-00131 and ITC-T/C-20240808-00132, are being referred to the relevant Executive Branch agencies for their views on any national

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[24] *Id*. at 15.

[25] *Id.*, Chart 9: Ownership Structure of Metronet Systems Assuming Completion of *Post-Closing Pro Forma Changes.*

[26] *Id*. at 6.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*. at 7-9.

[31] *Id*. at 7.

[32] *Id*.

[33] *Id*.

[34] 47 CFR § 63.03.

security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.[35]

Domestic Section 214 Application Filed for the Transfer of Control of the Subsidiaries of Metronet Holdings, LLC to Metronet Systems Holdings, LLC, WC Docket No. 24-244 (filed Aug. 8, 2024).

GENERAL INFORMATION

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

Interested parties may file comments 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 ECFS at http://apps.fcc.gov/ecfs/ .
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent by hand or messenger deliver, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.**
    - 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).

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

1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;

[35] 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

2) David Krech, Office International Affairs, david.krech@fcc.gov; and

3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the 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.[36] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson at dennis.johnson@fcc.gov.

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[36] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

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

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

DA 24-971
Released: September 20, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF ARISTOTLE UNIFIED COMMUNICATIONS INC TO WISPER ISP, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-219

Comments Due: October 4, 2024
Reply Comment Due: October 11, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Aristotle Unified Communications Inc (Aristotle) and Wisper ISP, LLC (Wisper) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to assign Aristotle's domestic section 214 authorization for its State of Missouri Connect America Fund (CAF) Phase II auction locations (Assigned Census Blocks) to Wisper.[2]

Aristotle, an Arkansas corporation, provides voice and broadband service to approximately 1,800 residential and business subscribers in rural communities in Arkansas using fixed wireless and fiber-to-the-home technologies.[3] Aristotle is a designated Eligible Telecommunications Carrier (ETC) in Missouri and is authorized to receive $3,001,544.70 in CAF Phase II support for the Assigned Census Blocks to deploy voice and 25/3 Mbps broadband service to 788 locations in Missouri.[4]

Wisper, a Delaware limited liability company, provides fixed wireless or fiber-based broadband and voice services to approximately 20,000 residential, commercial, and enterprise

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

[2] Application for Assignment of Domestic 214 Authorization, Pursuant to the Communications Act of 1934, as Amended, from Aristotle Unified Communications Inc, to Wisper ISP LLC, WC Docket No. 24-219 (filed July 17, 2024) (Application). Applicants filed supplements to the application on September 5, 2024 and September 19, 2024. Letter from Stephen E. Coran and David S. Keir, Counsel to Wisper ISP, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-219 (filed Sept. 5, 2024) (Sept. 5 Supplement); Letter from Stephen E. Coran, Counsel to Wisper ISP, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-219 (filed Sept. 19, 2024) (Sept. 19 Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 3-4.

[4] *Id*. at 4. *See 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 (AU/WCB 2019).

subscribers in Arkansas, Illinois, Indiana, Kansas, Missouri, and Oklahoma.[5] Wisper offers expanded broadband coverage in previously under-served and unserved rural areas, delivers high-speed Internet at speeds comparable to or exceeding DSL and cable, and provides a competitive alternative to phone, satellite and cable providers.[6] On February 13, 2020, the Bureau authorized Wisper ISP, Inc. (Wisper, Inc.), Wisper's predecessor-in-interest,[7] a designated ETC, to receive CAF Phase II support of approximately $220 million to serve 80,149 locations in Arkansas, Illinois, Indiana, Kansas, Missouri, and Oklahoma.[8] On June 14, 2022, the Bureau authorized Wisper to receive Rural Digital Opportunity Fund support for an estimated 564 locations in Arkansas for a total of $68,032.50; an estimated 23 locations in Illinois for a total of $81,815.00; and an estimated 694 locations in Missouri for a total of $1,069,097.00.[9] Wisper, a wholly-owned subsidiary of Wisper Topco Inc. (Wisper Topco), a Delaware corporation, is owned by Nathan Stooke, U.S. citizen and CEO of Wisper (60%), and E8 Topco Partnership LP (E8 Topco), a Delaware limited partnership supported by a substantial investment from the Digital Alpha family of funds,[10] which focuses on investing in digital infrastructure (40%).[11] E8 Aggregator LP wholly-owns E8 Topco; however, E8 Topco is ultimately controlled by U.S. citizen, Rick Shrotri.[12] No other individual or entity, directly or indirectly, holds 10% or more equity or voting interest in Wisper.[13] Applicants assert there is no overlap in the service areas of Wisper and its affiliates with the Assigned Census Blocks.[14]

Pursuant to the terms of the proposed transaction, Wisper agreed to acquire the Assigned Census Blocks and related assets from Aristotle and to assume the CAF Phase II obligations thereunder.[15] Applicants state that Aristotle will convey to Wisper assets it acquired for the CAF-supported deployment in the Assigned Census Block, including engineering plans, equipment and facilities, unexpended CAF Phase II support and the right to receive future CAF Phase II support.[16] Moreover Applicants state, after consummation of the proposed transaction, Aristotle will continue to exist and operate under the same name and will continue to provide service in both CAF-

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[5] Application at 4.

[6] *Id*.

[7] On July 10, 2020, Wisper ISP, Inc. converted to Wisper. *See id.* at 5.

[8] *Id*. *See Connect America Fund Phase II Auction Support Authorized for 1060 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 945, Attach. A (Authorized Long-Form Applicants and Winning Bids) (AU/WCB 2020).

[9] Application at 6. *See Rural Digital Opportunity Fund Support Authorized for 513 Winning Bids; Bid Defaults Announced*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-20, Public Notice, 37 FCC Rcd 7217, Attach A (AU/WCB 2022).

[10] Application at 7, n.12, 14, Exh. A.

[11] *Id*. at 7, 14-15, Exh. A.

[12] Sept. 19 Supplement at 1. (explaining that Rick Shrotri holds 100% voting/0% equity in Digital Alpha UGP II, LLC and Digital Alpha UGP II, LLC holds 100% voting/0% equity in Digital Alpha GP II, LP); *see also* Application at Exh. A.

[13] Application at 15.

[14] *Id*. at 12-13; Sept. 5 Supplement at 2.

[15] Application at 7-8.

[16] *Id*. at 8.

supported and unsupported areas outside the Assigned Census Blocks.[17] Applicants assert that any customers of Aristotle within the Assigned Census Blocks will become customers of Wisper and that no carrier change charges will result from the proposed transaction.[18] In assuming Aristotle's CAF obligations, Applicants aver that any changes to the rates, terms, and conditions of service will be undertaken in the future pursuant to customers' contracts, tariffs, and applicable law.[19]

Applicants request streamlined processing and assert that the proposed transaction is consistent with the public interest, convenience, and necessity.[20] Because the proposed would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[21]

Application for Assignment of Domestic 214 Authorization, Pursuant to the Communications Act of 1934, as Amended, from of Aristotle Unified Communications Inc to Wisper ISP, LLC, WC Docket No. 24-219 (filed July. 17, 2024).

GENERAL INFORMATION

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

Interested parties may file comments 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).

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 3, 16.

[21] 47 CFR § 63.03(c)(1)(v).

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).

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

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

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[22] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

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[22] *See* 47 CFR § 1.45(c).

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

In the Matter of	)	
	)	
World Harvest Communications, Inc.	)	Facility ID 32985
Licensee of WKMB(AM),	)	
Stirling, New Jersey	)	FRNs: 0008439093, 0004273843

ORDER TO PAY OR TO SHOW CAUSE

Adopted: September 23, 2024 **Released: September 23, 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 license held by World Harvest Communications, Inc. (Licensee) for WKMB(AM), Stirling, New Jersey (Station) for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

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

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;[3] for FY 2011, it was September 14, 2011;[4] for FY 2012, it was September 13, 2012;[5] for FY 2014, it was September 23, 2014;[6] for FY 2015, it was September 24, 2015;[7] for FY 2016, it was September 27, 2016;[8]

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

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

[3] *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD August 9, 2010).

[4] *Payment Methods and Procedures for Fiscal Year 2011 Regulatory Fees*, Public Notice, DA 11-1418, 26 FCC Rcd 11371 (OMD August 17, 2011).

[5] *Payment Methods and Procedures for Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD August 13, 2012).

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

[7] *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, DA 15-1013, 30 FCC Rcd 9941 (OMD September 11, 2015).

[8] *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD September 6, 2016).

for FY 2017, it was September 26, 2017;[9] for FY 2018, it was September 25, 2018;[10] for FY 2019, it was September 27, 2019;[11] for FY 2021, it was September 27, 2021;[12] for FY 2022, it was September 30, 2022;[13] and for FY 2023, it was September 20, 2023.[14] When Licensee failed to pay or only partially paid its regulatory fees by those deadlines, the Commission assessed charges that included the statutory late payment penalties required by section 9A(c)(1) of the Act[15] and section 1.1164 of the Rules,[16] and interest and administrative costs set forth in section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA) and section 1.1940 of the Rules.[17]

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of $1,874.97 for FY 2010; $2,085.40 for FY 2011; $2,465.13 for FY 2012; $2,610.27 for FY 2014; $2,593.57 for FY 2015; $2,888.48 for FY 2016; $2,852.96 for FY 2017; $2,562.50 for FY 2018; $2,781.25 for FY 2019; $3,465.45 for FY 2021; $3,154.85 for FY 2022; and $3,032.53 for FY 2023 for a total of $32,367.36. Additional interest and other charges will continue to accrue on this debt until it is paid in full. The Commission sent Licensee a demand letter in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.[18] When Licensee did not pay its regulatory fee debts, the Commission transferred the debt to the United States Department of Treasury (Treasury) for collection.[19] At the Commission's request, the Treasury has returned the FYs 2010, 2011, 2012, 2014, 2015, 2016, 2017, 2018, 2019, 2021, 2022, and 2023 regulatory fee debts to the Commission for further collection.

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.[20] Licensee is

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[9] *Payment Methods and Procedures for Fiscal Year 2017 Regulatory* Fees, Public Notice, 2017 WL 3953380 (OMD September 6, 2017).

[10] *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.

[11] *Regulatory Fee Filing Window Extended to Friday, September 27, 2019*, Public Notice, DA 19-941, 34 FCC Rcd 8580 (OMD September 23, 2019).

[12] *Payment Methods and Procedures for Fiscal Year 2021 Regulatory Fees*, Public Notice, DA 21- 1112, 36 FCC Rcd 13423 (OMD September 7, 2021).

[13] *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).

[14] *Payment Methods and Procedures for Fiscal Year 2023 Regulatory Fees*, Public Notice, DA 23- 765 (OMD August 28, 2023).

[15] 47 U.S.C. § 159A(c)(1).

[16] 47 CFR § 1.1164.

[17] 31 U.S.C. § 3717; 47 CFR § 1.1940.

[18] *See* 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letter, the Media Bureau notified Licensee of its delinquency in paying the Station's regulatory fees. Email from Robin Lott, Audio Division, FCC Media Bureau, to Gary Kirkwood, World Harvest Communications (Apr. 14, 2023, 5:44 PM EDT).

[19] *See* 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917.

[20] 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

(continued….)

hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C)(i) of the Act and section 1.1164(f)(1) of the Rules,[21] 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.[22] Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.[23]

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, World Harvest Communications, Inc., is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FY's 2010, 2011, 2012, 2014, 2015, 2016, 2017, 2018, 2019, 2021, 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.

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)

World Harvest Communications, Inc., must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

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

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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).

[21] 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

[22] 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

[23] 47 U.S.C. § 159A(c)(4)(C)(ii)(iii) ; 47 CFR § 1.1164(f)(3).

[24] https://apps.fcc.gov/cores/userLogin.do

10. **IT IS FURTHER ORDERED** that World Harvest Communications, Inc., must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www/fcc.gov/Forms/Forms 159/159.pdf. When completing the FCC Form 159, World Harvest Communications, Inc., must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 1038 (for FY 2010); 1138 (for FY 2011); 1238 (for FY 2012); 1438 (for FY 2014); 1538 (for FY 2015); 1638 (for FY 2016); 1738 (for FY 2017); 1838 (for FY 2018); 1938 (for FY 2019); 2138 (for FY 2021); 2238 (for FY 2022); and 2338 (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 copy must be emailed to Alexander.Sanjenis@fcc.gov and Olivia.Hill@fcc.gov.

- 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 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 World Harvest Communications, Inc., c/o Gary S. Kirkwood, Jr., 1100 US Highway, Route 22 East, North Plainfield, NJ 07060, and to its counsel, David G. O'Neil, Esq., Rini O'Neil, PC, 2101 L Street, NW., Suite 300, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

[25] 47 CFR § 1.16.

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-973
Released: October 1, 2024

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

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 02-60
WC Docket No. 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 Reconsideration[3]

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

The Learning Community Charter School did not raise any arguments in its initial waiver for why its FCC Form 471 was filed out of window. On reconsideration, it now raises the argument that staff shortages and a high turnover rate contributed to the late filing of its application because the personnel assigned to the filing were inexperienced with

(continued….)

Department of Management Services, FL, Application No. 241039932, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 1, 2024)

Earlimart Elementary School District, CA, Application No. 241040174, Petition for Reconsideration, CC Docket No. 02-6 (filed July 30, 2024)

O'Fallon Public Library, IL, Application No. 241003717, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 31, 2024)

The Learning Community Charter School, RI, Application No. 241040213, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 26, 2024)

Warren Township Schools, NJ, Application No. 221010538, Petition for Reconsideration, CC Docket No. 02-6 (filed Mar. 28, 2024)

Dismissed to Allow Appeal to be Filed with USAC[4]

Our Lady of Perpetual Help in Glendale, AZ, Application No. 241006552, Request for Review, CC Docket No. 02-6 (filed July 30, 2024)

Granted[5]

(Continued from previous page)
the E-Rate program. Our rules state that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission. Because the Petitioner was aware of these personnel issues when it first filed its waiver request with the Commission, we dismiss the petition because it relies on a known fact that should have been raised earlier. *See* 47 CFR § 1.106(b)(2), (c)(2) (stating that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission, unless it is required in the public interest). As an alternative and independent basis for rejecting this petition, we also deny the petition on the merits. The Commission has held that neither employee error nor staffing changes relieves applicants of their responsibility to understand and comply with the program requirements for meeting application deadlines. *See, e.g., Request for Waiver by Duncan Public Library, et al.; Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22430, 22431, para. 3 (WCB 2003) (*Duncan Public Library*).

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

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

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

Discount Calculation[6]

Bet Yaakov of the Jersey Shore, NJ, Application No. 221033637, Request for Waiver, CC Docket No. 02-6 (filed July 31, 2024)

Pendleton School District, OR, Application No. 241010167, Request for Waiver, CC Docket No. 02-6 (filed Aug. 8, 2024)

Torah Academy of Minneapolis, MN, Application Nos. 241036794, 241036822, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2024)

Granting Additional Time to Respond to USAC with Information[7]

Tomer Dvora School, NJ, Application No. 231036524, Request for Review, CC Docket No. 02-6 (filed Apr. 15, 2024, supplemented May 30, 2024)

Torat Hayim Hebrew Academy, CA, Application No. 181005916, Request for Review, CC Docket No. 02-6 (filed Apr. 19, 2024)

Yeshivat Shaare Torah, NY, Application Nos. 1048376, 1048380, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2024)

Granting Additional Time to Respond to USAC with Information During Invoicing[8]

Cal-Ore Communications, Inc. (CENIC-Corporation for Education Network Initiatives in California), CA, Application No. 221024832, Request for Waiver, CC Docket No. 02-6 (filed Aug. 14, 2024)

Family Christian Association of America, FL, Application No. 211006482, Request for Review, CC Docket No. 02-6 (filed Feb. 13, 2024)

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[6] *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Academia Claret et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703, 10708, para. 12 (WCB 2006) (*Academia Claret Order*) (allowing the submission of discount calculation information when the applicant was previously unable to fully comply with the document request within USAC's permitted time period).

Consistent with precedent, we also waive the appeal filing deadline for Pendleton School District. *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*) (waiving the appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision).

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

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

Logan School for Creative Learning, CO, Application No. 211036570, Request for Review, CC Docket No. 02-6 (filed May 6, 2024)

Salam School, WI, Application Nos. 221029962, 221029969, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2024)

Granting on Reconsideration – FCC Form 471 Filed More than 30 Days Late Due to Serious Illness[9]

St. Patrick's Catholic School, IA, Application No. 241040206, Petition for Reconsideration, CC Docket No. 02-6 (filed June 10, 2024)

Granting on Reconsideration – Untimely Filed Appeal[10]

West Central Area ISD 2342, MN, Application Nos. 241039442, 241039449, Petition for Reconsideration, CC Docket No. 02-6 (filed Sept. 10, 2024)

Late-Filed FCC Form 471 Applications – Application Filed Late Within Reasonable Period Despite School Reorganization[11]

DeKalb Community Unit School District 428, IL, Application No. 241040171, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2024)

Late-Filed FCC Form 486[12]

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[9] *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 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).

In addition to the main E-Rate staff person at St. Patrick's Catholic School experiencing complications from giving birth, the community and school staff members were dealing with the aftermath of a deadly shooting at the local high school.

[10] *See, e.g., Callisburg Independent School District Order*, 28 FCC Rcd at 9459, 9461, para. 5 (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our previous determination); *Request for Review of Decisions of the Universal Service Administrator by Franklin-McKinley School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 2578, 2580, n.25 (2008) (*Franklin-McKinley School District Order*) (granting a waiver of the 60-day appeal-filing deadline because the person responsible for handling E-rate matters learned of the denial after being out of the office handling a serious family illness and did not receive notice of the USAC decision that triggered the appeal filing deadline). We also find good cause to waive the application filing deadline in this instance. *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (*Academy of Math and Science Order*) (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline).

[11] *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by A.C.E. Charter High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15907, 15908, para. 2 (*A.C.E. Charter High School Order*) (WCB 2012) (finding special circumstances existed to justify granting waiver requests where, for example, petitioners filed within a reasonable period of the application filing window's close despite a school reorganization).

Greenbrier County School District, WV, Application No. 231036694, Request for Waiver, CC Docket No. 02-6 (filed July 31, 2024)

Ministerial and/or Clerical Errors[13]

Atoka Independent School District, OK, Application Nos. 241019893, 241026258, Request for Waiver, CC Docket No. 02-6 (filed Aug. 9, 2024)

Eastern Owyhee County Library, ID, Application No. 241014703, Request for Waiver, CC Docket No. 02-6 (filed June 17, 2024)

Kendrick School District #283, ID, Application No. 241024597, Request for Waiver, CC Docket No. 02-6 (Aug. 12, 2024)

Our Mother of Sorrows School, AZ, Application No. 241014690, Request for Waiver, CC Docket No. 02-6 (Aug. 24, 2024)

Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application[14]

Action for a Better Community, NY, Application No. 241040396, Request for Waiver, CC Docket No. 02-6 (filed Aug. 20, 2024)

Unutilized Equipment[15]

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[12] *See, e.g.*, *Requests for Waiver of Decisions of the Universal Service Administrator by Archdiocese of New Orleans et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 11747, 11750, para. 10 (WCB 2016) (*Archdiocese of New Orleans Order*) (granting relief for late-filed FCC Forms 486 that were filed no later than 120 days after the last day to receive service for the funding request at issue and where the applicant demonstrated good cause for the late filing).

[13] *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-20, nn.5, 9, 12, 16 (WCB 2010) (*Ann Arbor Public Schools Order*) (WCB 2010) (granting a waiver where the applicant omitted items or entities from its source list on its FCC Form 471); *see, e.g., Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15520, n.19 (WCB 2008) (*Archer Public Library Order*) (permitting correction when applicant understated the amount of its recurring charges on its FCC Form 471 application).

[14] *See, e.g., Archer Public Library Order,* 23 FCC Rcd at 15521 n.19 (permitting applicant to correct its FCC Form 471 to conform to the source document). The petitioner did not realize its funding request was omitted until the FY 2024 application filing window had closed. The petitioner then filed an FCC Form 471 application that was out of window. We direct USAC to add this funding request to this petitioner's timely-filed FY 2024 FCC Form 471 application or treat the late-filed application as timely filed.

[15] We remand Independence Unified School District 446 and Twotrees Technologies' request for waiver to USAC for further review. In 2009, the Commission provided formal guidance to USAC on situations where USAC finds equipment was not being utilized and whether recovery was required. *See* Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, FCC, to Scott Barash, Acting Chief Executive Officer, USAC, CC Docket No. 02-6, Letter, 24 FCC Rcd 417 (WCB 2009) (2009 "Table C" Recovery Issues Letter). In the letter, the Bureau explained that USAC should not seek recovery in every instance in which it determined the equipment was not utilized. The Bureau noted that, for example, in situations where equipment was uninstalled because of personnel issues, but was subsequently installed, recovery would not be warranted. In the instant case, Independence Unified School District 446 installed the equipment and had it placed in service long before USAC issued a COMAD on March 15, 2024.

(continued….)

Independence Unified School District 446 and Twotrees Technologies, KS, Application No. 201025443, Request for Waiver, CC Docket No. 02-6 (filed Aug. 1, 2024)

USAC Decision Issued After Invoice Deadline[16]

Adelphoi Education School District, PA, Application No. 211018229, Request for Waiver, CC Docket No. 02-6 (filed Feb. 28, 2024)

Hydaburg City School District, AK, Application No. 211039005, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2024)

KIPP Jacksonville District Office, FL, Application Nos. 221015598, 221036924, Request for Waiver, CC Docket No. 02-6 (filed July 28, 2024)

Rite of Passage – Sierra Sage Academy, NV, Application No. 221016520, Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2024)

Union County, PA, Application No. 221006422, Request for Waiver, CC Docket No. 02-6 (filed Mar. 25, 2024)

USAC Decision Rationale Vague[17]

New Hope Christian Academy, OH, Application No. 221004404, Request for Waiver, CC Docket No. 06-2 (Aug. 14, 2024)

USAC Inaction[18]

Uintah County School District, UT, Application No. 221030962, Request for Waiver, CC Docket No. 02-6 (June 27, 2024)

Waiver of Appeal Filing Deadline[19]

(Continued from previous page)
We now ask USAC to reassess its recovery action based on our guidance in the "Table C" Recovery Issues Letter regarding recovery when equipment was not utilized.

[16] *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (*2020 Invoicing 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).

[17] *Request For Review Of The Decision Of The Universal Service Administrator By Henkels & McCoy, Inc., Little Rock School District, Little Rock, Arkansas*, CC Docket No. 02-6, Order, 21 FCC Rcd 7934, 7937, para. 7 (WCB 2012) (*Henkels & McCoy, Inc. Order*) (remanding to USAC where the rationale for USAC decision is unclear and instructing USAC to provide specific explanations for its decision and permitting appellant an opportunity to respond).

[18] *See Application for Review of a Decision of the Wireline Competition Bureau by Sioux Falls School District 49-5 Sioux Falls, South Dakota; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 8963, 8969, para. 13 (2020) (*Sioux Falls School District Order*) (granting waiver where applicant error could have been corrected promptly but for USAC inaction).

[19] *See, e.g., ABC Unified School District Order,* 26 FCC Rcd at 11019, para. 2 (granting waivers of appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision). We make no finding on the underlying
(continued….)

Centro Mater Child Care Services Inc., NJ, Application No. 241009243, Request for Waiver, CC Docket No. 02-6 (filed Sept. 5, 2024)

Florence Independent School District, TX, Application No. 241019130, Request for Waiver, CC Docket No. 02-6 (filed Aug. 19, 2024)

Ganado Unified School District, AZ, Application No. 181028385, Request for Waiver, CC Docket No. 02-6 (filed Oct. 21, 2020)

Ladacin Network Admin Office, NJ, Application No. 241009210, Request for Waiver, CC Docket No. 02-6 (filed Sept. 4, 2024)

Lewistown School District 1, MT, Application No. 241001645, Request for Waiver, CC Docket No. 02-6 (filed Aug. 22, 2024)

Medford School District 549C, OR, Application Nos. 241006003, 241006083, 241030492, Request for Waiver, CC Docket No. 02-6 (filed Aug. 1, 2024)

Rolling Hills Prep School, CA, Application No. 241011437, Request for Waiver, CC Docket No. 02-6 (filed Aug. 18, 2024)

Waiver of Special Construction Service Delivery Deadline[20]

North Central Consortium, NM, Application No. 201026229, Request for Waiver, CC Docket No. 02-6 (filed July 16, 2024)

Denied

Late-Filed FCC Form 471 Applications[21]

Abington School District, PA, Application No. 241040296, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2024)

Belmond-Klemme Community School District, IA, Application No. 241040413, Request for Waiver, CC Docket No. 02-6 (filed Aug. 28, 2024)

(Continued from previous page)
issues in these appeals and remand these applications to USAC to make a determination on the merits. *See supra* note 5.

[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 WANRack, LLC 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 also supra* note 5.

[21] *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 deadline where petitioners failed to present special circumstances justifying a waiver of the Commission's rules).

Biblioteca Publica Vieques Library System, PR, Application No. 241040219, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2024)

Carondelet Catholic, MN, Application No. 241040291, Request for Waiver, CC Docket No. 02-6 (filed July 9, 2024)

Christian Brothers High School, CA, Application No. 241040155, Request for Waiver, CC Docket No. 02-6 (filed July 26, 2024)[22]

Christ Lutheran School, CA, Application No. 241040198, Request for Waiver, CC Docket No. 02-6 (filed July 11, 2024)

Chumash Library Learning Center, CA, Application No. 241040344, Request for Waiver, CC Docket No. 02-6 (filed Aug. 22, 2024)

Cristo Rey San Diego High School, CA, Application No. 241040371, Request for Waiver, CC Docket No. 02-6 (filed Aug. 6, 2024)

Eastbrook Academy Inc., WI, Application No. 241040405, Request for Waiver, CC Docket No. 02-6 (filed Aug. 23, 2024)

Ecole Bilingue De Berkeley, CA, Application No. 241040320, Request for Waiver, CC Docket No. 02-6 (filed July 17, 2024)[23]

Fort Huachuca Accommodation School District, AZ, Application No. 241040415, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2024)

Geff Community Consolidated School District 14, IL, Application No. 241040317, Request for Waiver, CC Docket No. 02-6 (filed July 24, 2024)

Guadalupe Regional Middle School, TX, Application No. 241040369, Request for Waiver, CC Docket No. 02-6 (filed Aug. 6, 2024)

Haskell Independent School District, TX, Application No. 241040305, Request for Waiver, CC Docket No. 02-6 (filed July 15, 2024)

Ivy Academia Charter School District, CA, Application No. 241040362, Request for Waiver, CC Docket No. 02-6 (filed Aug. 13, 2024)

Jasper County School District, GA, Application No. 241040386, Request for Waiver, CC Docket No. 02-6 (filed Aug. 13, 2024)

[22] In addition to submitting its FCC Form 471 application late, Christian Brothers High School filed its waiver request after the 60-day appeal or waiver request deadline. *See* 47 CFR § 54.720 (requiring petitioners to file their appeals or waiver requests within 60 days of an adverse USAC decision).

[23] Ecole Bilingue De Berkeley inadvertently listed an incorrect application number in its waiver request. We are including the correct FCC Form 471 number in this Public Notice.

Kansas City International Academy, MO, Application No. 241040418, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2024)

Kansas City International Academy, MO, Application No. 241040422, Request for Waiver, CC Docket No. 02-6 (filed Sept. 3, 2024)

Kreiva Academy Public Charter School, NH, Application No. 241040306, Request for Waiver, CC Docket No. 02-6 (filed July 11, 2024)

Miami County Educational Service Center, OH, Application No. 241040404, Request for Waiver, CC Docket No. 02-6 (filed Aug. 21, 2024, supplement Sept. 5, 2024)

Montezuma Unified School District 371, KS, Application No. 241040288, Request for Waiver, CC Docket No. 02-6 (filed July 8, 2024)

New Castle Public Library, PA, Application No. 241040358, Request for Waiver, CC Docket No. 02-6 (filed Aug. 26, 2024)

North Caldwell School District, NJ, Application No. 241040392, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2024)

Northlake Public Library District, IL, Application No. 241040310, Request for Waiver, CC Docket No. 02-6 (filed July 15, 2024)

North Riverside Public Library District, IL, Application No. 241014306, Request for Waiver, CC Docket No. 02-6 (filed Aug. 3, 2024)

Pleasant Valley Community School District, IA, Application No. 241040316, Request for Waiver, CC Docket No. 02-6 (filed July 16, 2024)

Prospect Heights Public Library District, IL, Application No. 241040323, Request for Waiver, CC Docket No. 02-6 (filed July 17, 2024)

Reid Traditional Schools Painted Rock Academy, Reid Traditional Schools Valley Academy, AZ, Application Nos. 241040408, 241040407, Request for Waiver, CC Docket No. 02-6 (filed Aug. 27, 2024)

Richmond School District R 16, MO, Application Nos. 241040297, 241040295, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2024)

Rippey Public Library, IA, Application No. 241039340, Request for Waiver, CC Docket No. 02-6 (filed Aug. 2, 2024)

Sculptor Charter School, FL, Application No. 241040346, Request for Waiver, CC Docket No. 02-6 (filed July 29, 2024)

Sculptor Charter School, FL, Application No. 241040347, Request for Waiver, CC Docket No. 02-6 (filed Aug. 20, 2024)

St. Athanasius School, PA, Application No. 241040387, Request for Waiver, CC Docket No. 02-6 (filed Aug. 13, 2024)

Sunnyvale Independent School District, TX, Application No. 241040385, Request for Waiver, CC Docket No. 02-6 (filed Aug. 12, 2024)

Troy City Schools, OH, Application No. 241040403, Request for Waiver, CC Docket No. 02-6 (filed Aug. 22, 2024, supplement Sept. 5, 2024)

Ulysses Unified School District 214, KS, Application No. 241040217, Request for Waiver, CC Docket No. 02-6 (filed Aug. 12, 2024)[24]

Late-Filed Invoice or Invoice Deadline Extension[25]

20/20 Technologies LLC (Seymour Community School District, Wallace Public School District, McCook Public School District, Stapleton Public School District), Application Nos. 201027768, 201025925, 201028438, 201036305, 201039727, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Achievement House Cyber Charter School, PA, Application No. 221035525, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Achievement House Cyber Charter School, PA, Application No. 221035525, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2024)

Appalachia Intermediate Unit 8, PA, Application No. 221033878, Request for Review, CC Docket No. 02-6 (filed Aug. 2, 2024)

Asotin County Library System, WA, Application No. 221035724, Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2024)

Boyd Buchanan School, TN, Application No. 221038175, Request for Waiver, CC Docket No. 02-6 (filed Aug. 9, 2024)

Casa Grande Elementary School District, AZ, Application Nos. 201003953, 211015028, Request for Waiver, CC Docket No. 02-6 (filed Aug. 18, 2024)

Central PA Institute of Science and Technology, PA, Application No. 221037085, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2024)

Coffee County Lannom Public Library, TN, Application No. 221001522, Request for Waiver, CC Docket No. 02-6 (filed Aug. 14, 2024)

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[24] In addition to submitting its FCC Form 471 application late, Ulysses Unified School District 214 filed its waiver request after the 60-day filing deadline. *See* 47 CFR § 54.720 (requiring petitioners to file their appeals or waiver requests within 60 days of an adverse USAC decision).

[25] 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 to justify a waiver of the Commission's rules).

Frugal, Inc. (Broken Bow Public School District), NE, Application No. 211031144, Request for Waiver, CC Docket No. 02-6 (filed Aug. 8, 2024)

Hope Community Academy, MN, Application No. 221037905, Request for Waiver, CC Docket No. 02-6 (filed Aug. 8, 2024)

Moreno Valley High School, NM, Application No. 221034366, Request for Waiver, CC Docket No. 02-6 (filed Mar. 13, 2024)

RCN Telecom Services (Lehigh), LLC (Bethlehem Area Public Library), PA, Application No. 211002821, Request for Waiver, CC Docket No. 02-6 (filed Mar. 13, 2024)

Saint Benedict School, PA, Application No. 221034476, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

St. John Evangelist School, PA, Application No. 221020929, Request for Waiver, CC Docket No. 02-6 (filed July 25, 2024)

St. Joseph Academy, WI, Application No. 221027592, Request for Waiver, CC Docket No. 02-6 (filed Sept. 13, 2024)

Ministerial and Clerical Errors[26]

Perryville School District 7, AR, Application No. 241000719, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2024)

Soda Springs Public Library, ID, Application No. 221029964, Request for Waiver, CC Docket No. 02-6 (filed June 29, 2024)

Relying on FCC Form 470 That Did Not Seek Bids on Types of E-Rate Services Later Requested[27]

Moscow School District 281, ID, Application No. 241035926, Request for Waiver, CC Docket No. 02-6 (filed July 23, 2024)

Sugar-Salem School District 322, ID, Application No. 211035372, Request for Waiver, CC Docket No. 02-6 (filed Feb. 21, 2022)

Untimely Filed Appeals or Waiver Requests[28]

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[26] *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1924, 1925, para. 1 (WCB 2012) (*Assabet Valley Regional Vocational District Order*) (finding petitioners had not demonstrated good cause to justify waivers permitting changes to the applicants' E-Rate applications).

[27] *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, 4541, para. 14 (WCB 2009) (*Albert Lea Schools Order*); *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 9289, 9289-90, para. 5 (WCB 2014) (*Chicago Public Schools Order*) (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).

Arlington Christian Academy, OH, Application No. 231039813, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2024)

Centro Educativo Pasitos Del Saber, Inc (CEPSI), PR, Application Nos. 241018776, 241018766, Request for Waiver, CC Docket No. 02-6 (filed Aug. 8, 2024)

Delta County Joint School District, CO, Application Nos. 241039160, 241010423, Request for Waiver, CC Docket No. 02-6 (filed July 9, 2024)

Iberville Parish School District, LA, Application No. 739863, Request for Review, CC Docket No. 02-6 (filed May 28, 2014)

Kingfisher Independent School District 7, OK, Application No. 241040123, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2024)

Northside Charter High School, NY, Application Nos. 241039806, 241039303, 241039311, Request for Waiver, CC Docket No. 02-6 (filed Aug. 19, 2024)

Queens Borough Public Library, CA, Application No. 221023802, Request for Waiver, CC Docket No. 02-6 (filed Aug. 16, 2024)

Safford Unified School District 1, AZ, Application No. 221031258, Request for Waiver, CC Docket No. 02-6 (filed Mar. 4, 2024)

The School Board of Okaloosa County, FL, Application No. 241020713, Request for Waiver, CC Docket No. 02-6 (filed Aug. 5, 2024)

Woodward Independent School District 1, OK, Application No. 241040049, Request for Waiver, CC Docket No. 02-6 (filed July 17, 2024)

Emergency Connectivity Fund Program
WC Docket No. 21-93

Dismissed as Insufficient[29]

(Continued from previous page)

[28] *See, e.g.*, *Requests for Review of the Decisions of the Universal Service Administrator by Agra Public Schools I-134; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, 5823, para. 1 (WCB 2014) (*Bound Brook School District Order*) (denying requests for review and/or waiver on the grounds that the petitioners failed to: (1) submit their appeals either to the Commission or to USAC within 60 days or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not demonstrate special circumstances required for the Commission to waive the rule).

[29] *See* 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); *see also Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require (1) a statement setting forth the party's interest in the matter presented for

(continued….)

Oak Hill Public Library, Application No. ECF222120042, Request for Waiver and/or Review, WC Docket No. 21-93 (filed May 28, 2024)

Dismissed as Moot[30]

Atlanta SMART Academy, GA, Application No. ECF202112602, Request for Waiver, WC Docket No. 21-93 (filed July 8, 2024)

College Achievement Central Charter School, NJ, Application No. ECF202115233, Request for Waiver, WC Docket No. 21-93 (filed Feb. 15, 2024)

Giant Steps Illinois, Inc, IL, Application No. ECF202104837, Request for Waiver, WC Docket No. 21-93 (filed July 11, 2024)

Dismissed as Moot – USAC Took Action Requested[31]

Lebo-Waverly School District 243, KS, Application No. ECF202205843, Request for Waiver and/or Review, WC Docket No. 21-93 (filed May 9, 2024)

Granted[32]

Early Delivery[33]

(Continued from previous page)
review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology*; *Request for Review by Alternative Phone, Inc. and Request for Waiver*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011) (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. *See* 47 CFR § 54.1718(c).

[30] *See, e.g., Requests for Review of 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 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where invoicing records demonstrate that the entity was fully compensated for the funding it requested and all submitted invoices were funded). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules.

[31] *See, e.g., Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 8223, 8224, para. 2 (WCB 2012) (*Al Noor High School Order*) (dismissing as moot requests for review where USAC had taken the action the petitioner requested).

[32] We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.1711(d) and (e) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.1711(d)-(e) (codifying the invoice filing deadline and establishing the service delivery dates for equipment, other non-recurring services, and recurring services).

Chatham Charter School, NC, Application No. ECF202203740, Request for Waiver, WC Docket No. 21-93 (filed Jun. 20, 2024)

Prairie Central Unit School District 8, IL, Application No. ECF202203708, Request for Waiver, WC Docket No. 21-93 (filed May 20, 2024)

Denied

Untimely Filed Appeals or Waiver Requests[34]

Community Parents, Inc, NY, Application No. ECF202108660, Request for Review, WC Docket No. 21-93 (filed Jun. 28, 2024)

Sandoval Academy of Bilingual Education, NM, Application No. ECF222120241, Request for Waiver, WC Docket No. 21-93 (filed Feb. 29, 2024)

Rural Health Care Program
WC Docket No. 02-60

Granted

Waiver of the Invoice Filing Deadline[35]

Chesapeake Regional Health, VA, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21121311 (filed Nov. 14, 2022)

Denied

Waiver of the Invoice Filing Deadline[36]

(Continued from previous page)

[33] *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, 37 FCC Rcd 7445, 7459 n.25 (WCB 2022) (granting requests for waivers for equipment delivered before the start of the approved funding year).

[34] *See, e.g.*, *Agra Public Schools Order,* 25 FCC Rcd at 5688, para. 6; *Bound Brook School District Order,* 29 FCC Rcd at 5823, para. 1 (denying requests for review and/or waiver on the grounds that the petitioners failed to (1) submit their appeals either to the Commission or to USAC within the required timeframe; or failed to submit their waiver requests to the Commission within the required deadline set forth by the Commission's rules; and (2) did not demonstrate special circumstances necessary for the Commission to waive the rule). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. We note that the Commission adopted a shortened waiver and appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See* 47 CFR 54.1718; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, 8746, paras. 90, 107. As such, absent special circumstances, appeals of USAC's decisions or requests for waiver of Emergency Connectivity Fund Program rules that are filed later than 30 days as required by section 54.1718 of the Commission's rules will be denied.

[35] *See Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (granting a waiver of the invoice filing deadline when the petitioner missed the deadline due to technical issues outside of its control) (*Indiana Telehealth Network Order*). We waive the petitioners' invoice filing deadlines and allow them 120 days from the release of this Public Notice to file invoices.

OCHIN, Inc., OR, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220012209 (filed Aug. 8, 2024)

Contribution Methodology
WC Docket No. 06-122

Denied

Request for Waiver of FCC Form 499-A Late Filing Fees[37]

WIT Networks, LLC, Request for Waiver, WC Docket No. 06-122 (filed Aug. 27, 2024)

Smartrak Incorporated, Request for Waiver, WC Docket No. 06-122 (filed July 15, 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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[36] *See Indiana Telehealth Network Order*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (denying a request for waiver of the invoice filing deadline when the petitioner missed the deadline due to personnel issues).

[37] *See, e.g.*, *Universal Service Contribution Methodology; Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (finding that alleged mistakes by Outfitter's accounting firm and internal accounting staff were not adequate grounds for waiver); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213 (WCB 2011); *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc., et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying requests for waiver where claims of good cause amounted to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control). *See also* 47 CFR § 54.713(c) (requiring USAC to assess late filing fees if a contributor is more than 30 days delinquent in filing the FCC Form 499-A). To the extent petitioners' financial situations make it difficult to pay the invoices in full, they may set up a payment plan with USAC to satisfy the obligation. *See* https://www.usac.org/service-providers/making-payments/how-to-pay/payment-plans/.

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

In the Matter of	)	
	)	
Application of T-Mobile License LLC and Horry Telephone Cooperative, Inc. to Assign Spectrum Licenses	)	ULS File No. 0010864059
	)	
Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses	)	ULS File No. 0010877919
	)	
Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses	)	ULS File No. 0010902770

MEMORANDUM OPINION AND ORDER

Adopted: September 24, 2024 **Released: September 24, 2024**

By the Chiefs, Wireless Telecommunications Bureau and Office of Economics and Analytics:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consent to the applications filed by T-Mobile License LLC (T-Mobile) and Horry Telephone Cooperative, Inc. (HTC) (collectively, the

Applicants)[1] for a spectrum exchange agreement involving the assignment of 600 MHz spectrum licenses from HTC to T-Mobile and the assignment of cellular spectrum licenses from T-Mobile to HTC[2] (Spectrum Swap), as well as a separate purchase agreement involving the assignment of additional 600 MHz spectrum licenses from HTC to T-Mobile (Spectrum Assignment).[3]

2. After carefully evaluating the potential competitive effects of the proposed assignments, we find that the likelihood of competitive harm is low, for the reasons set forth below. In addition, we find that some public interest benefits are likely to be realized, such as the use of this spectrum for 5G services, resulting in enhanced network coverage, capacity, and performance to the benefit of American consumers. Further, we find that the petition to deny filed by EchoStar Corporation (EchoStar)[4] fails to provide a sufficient basis for denying the Applications. We find that the proposed assignment of licenses for both of these transactions would serve the public interest, convenience, and necessity and therefore we consent to the Applications.

II. BACKGROUND

A. Description of the Applicants

1. T-Mobile

3. T-Mobile is a wholly owned subsidiary of T-Mobile USA, Inc. and, indirectly, T-Mobile US, Inc., a publicly traded Delaware corporation controlled by Deutsche Telekom AG (Deutsche Telekom).[5] T-Mobile US, Inc. and its subsidiaries offer nationwide wireless voice and data services to consumer and business customers; they provide service to approximately 119.7 million postpaid and prepaid customers, as of December 31, 2023, as well as offering a wide selection of wireless devices and accessories.[6] T-Mobile US, Inc. reported 2023 total revenues of approximately $78.6 billion, with an operating income of approximately $14.3 billion.[7]

2. HTC

4. HTC, a telephone cooperative that is wholly owned by its member subscribers, is a corporation organized under the laws of South Carolina.[8] HTC is a full-service technology provider for

[1] Amended Applications of T-Mobile License LLC and Horry Telephone Cooperative, Inc. for License Assignment, ULS File No. 0010864059 (lead application) (Assignments from T-Mobile to HTC) (filed Mar. 11, 2024) and ULS File No. 0010877919 (Assignments from HTC to T-Mobile) (filed Mar. 12, 2024) (Spectrum Swap Applications); Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC for License Assignment, ULS File No. 0010902770 (filed Feb. 9, 2024) (Spectrum Assignment Application) (collectively, the Applications).

[2] Spectrum Swap Applications.

[3] Spectrum Assignment Application.

[4] Petition to Deny of EchoStar Corporation, ULS File Nos. 0010864059, 0010877919, and 0010902770 (filed Mar. 27, 2024) (EchoStar Petition to Deny).

[5] Spectrum Swap Applications, Exh. 1, Description of Transaction and Public Interest Statement at 1 (Spectrum Swap Public Interest Statement); Spectrum Assignment Application, Exh. 1, Description of Transaction and Public Interest Statement at 1 (Spectrum Assignment Public Interest Statement).

[6] T-Mobile US, Inc., SEC Form 10-K, at 5-6 (filed Feb. 2, 2024) (77% postpaid customers, 15% prepaid customers, and 8% wholesale, roaming, and other services).

[7] T-Mobile US, Inc., SEC Form 10-K, at 34 (filed Feb. 2, 2024).

[8] Spectrum Swap Public Interest Statement at 1; Spectrum Assignment Public Interest Statement at 1; FCC Ownership Disclosure Filing for Horry Telephone Cooperative, Inc., FCC Form 602, File No. 0009970048, Exh. A, Indirect Ownership Statement (filed Mar. 25, 2022), https://wireless2.fcc.gov/ownerQryDetail/ownership-search-results-detail.htm?applId=13305109&edittype=R/O&OwnershipSearch=Y&reqPage=1.

both residential and business services and has transitioned from telephone to Internet as the main service that it provides.[9] Currently, HTC provides broadband, voice, video, and wireless services to Horry, Georgetown, and Marion counties in South Carolina,[10] and it operates a fiber-optic network with more than 100,000 subscribers.[11]

B. Description of the Transactions

5. As stated above, the Applicants' requested assignments are pursuant to two transactions: an Exchange Agreement as described in the Spectrum Swap Applications[12] and a License Purchase Agreement as explained in the Spectrum Assignment Application.[13] Under the proposed Spectrum Swap, T-Mobile and HTC would exchange 20 megahertz of HTC's 600 MHz spectrum for up to 25 megahertz of T-Mobile's cellular spectrum in four counties in South Carolina.[14] Post-transaction, T-Mobile would hold 293 to 338 megahertz of spectrum, including 74 megahertz of below-1-GHz spectrum.[15] HTC would hold 92 to 137 megahertz of spectrum, including 12 to 37 megahertz of below-1-GHz spectrum.[16] Under the proposed Spectrum Assignment, T-Mobile would acquire 10 megahertz of HTC's 600 MHz spectrum in two counties in North Carolina.[17] Post-transaction, T-Mobile would hold 390 megahertz of spectrum, including 76 megahertz of below-1-GHz spectrum in those counties.[18]

6. The Applicants contend that approval of the proposed transactions will yield certain public interest benefits. Regarding the proposed Spectrum Swap, the Applicants argue that the transaction will provide T-Mobile with materially larger blocks of contiguous spectrum in the 600 MHz bands, which will allow it to provide consumers with greater capacity, and allow T-Mobile to offer more efficient and reliable wireless broadband services in these counties.[19] HTC asserts that the Spectrum Swap is consistent with the public interest because it will result in enhanced service offerings for HTC's customers in rural and urban South Carolina.[20] Regarding the proposed Spectrum Assignment, the Applicants argue that approval will enable T-Mobile to deploy the assigned spectrum using its existing

[9] Spectrum Swap Public Interest Statement at 2; Spectrum Assignment Public Interest Statement at 2.

[10] Opposition to Petition to Deny of Horry Telephone Cooperative, Inc., ULS File Nos. 0010864059, 0010877919, and 0010902770, at 2 (filed Apr. 8, 2024) (HTC Opposition).

[11] HTC Inc., *The History of Horry Telephone Cooperative (HTC Inc.)*, https://www.htcinc.net/about/ (last visited July 15, 2024).

[12] Spectrum Swap Public Interest Statement at 1, 2.

[13] Spectrum Assignment Public Interest Statement at 1.

[14] *See* Spectrum Swap Applications, Exh. 2A, T-Mobile Spectrum Aggregation (filed Mar. 8, 2024) (Spectrum Swap T-Mobile Spectrum Aggregation Exhibit); Spectrum Swap Applications, Exh. 2B, Horry Spectrum Aggregation (filed Mar. 8, 2024) (Spectrum Swap HTC Spectrum Aggregation Exhibit).

[15] Spectrum Swap T-Mobile Spectrum Aggregation Exhibit.

[16] Spectrum Swap HTC Spectrum Aggregation Exhibit.

[17] Spectrum Assignment Application, Exh. 2, T-Mobile Spectrum Aggregation (filed Feb. 1, 2024) (Spectrum Assignment T-Mobile Spectrum Aggregation Exhibit).

[18] Spectrum Assignment T-Mobile Spectrum Aggregation Exhibit.

[19] Spectrum Swap Public Interest Statement at 4.

[20] HTC Opposition at 2, 4; *see also* Letter from Donald L. Herman, Jr. and Shannon Forcheimer, Herman & Whiteaker, LLC, Counsel to Horry Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010864059, 0010877919, 0010902770, at 2 (filed June 7, 2024) (HTC Presentation Summary).

facilities in the market, which will result in added capacity and increased data throughput speeds that will help improve network reliability and coverage in areas that include underserved rural locations.[21]

C. Transaction Review Process

7. On February 9, 2024, T-Mobile and HTC filed the Spectrum Swap Applications and Spectrum Assignment Application separately requesting Commission approval of each of these transactions.[22] Each of the three applications was put on an accepted for filing public notice issued on March 13, 2024.[23] On March 27, 2024, EchoStar filed a petition to deny regarding the Spectrum Swap Applications and Spectrum Assignment Application, collectively;[24] no other parties filed petitions or comments. On April 8, 2024, T-Mobile and HTC each filed oppositions.[25] EchoStar filed a reply to these oppositions on April 15, 2024.[26] On June 7, 2024, EchoStar and the Applicants each filed a summary of an oral presentation to Commission staff.[27]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

8. Pursuant to section 310(d) of the Communications Act of 1934, as amended (Act), we must determine whether approving each proposed transaction involving T-Mobile and HTC will serve the public interest, convenience, and necessity.[28] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[29] If the proposed transaction does not violate a statute or rule, we then consider

[21] Spectrum Assignment Public Interest Statement at 3.

[22] Spectrum Swap Applications; Spectrum Assignment Application. Amended versions of the Spectrum Swap Applications were filed on March 11 and March 12, 2024.

[23] *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Applications Accepted for Filing*, ULS File Nos. 0010864059, 0010877919, and 0010902770, Public Notice, Report No. 18470 (WTB Mar. 13, 2024). This public notice also announced that the applications were subject to applicable pre-grant notice and petition procedures and provided a 14-day notice period, running until March 27, 2024. *See* 47 CFR § 1.948(j)(1)(iii).

[24] EchoStar Petition to Deny.

[25] T-Mobile Opposition; HTC Opposition.

[26] EchoStar Reply.

[27] Letter from Steve Sharkey, Vice President, Government Affairs Engineering and Technology Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010864059, 0010877919, and 0010902770 (filed June 7, 2024) (T-Mobile Presentation Summary); HTC Presentation Summary; Letter from Jeff Blum, Executive Vice President, External & Regulatory Affairs, EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010864059, 0010877919, and 0010902770 (filed June 7, 2024) (EchoStar Presentation Summary).

[28] 47 U.S.C. § 310(d); *see, e.g.*, *Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment*; *Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment*, ULS File Nos. 0010168412, 0010168420, and 0010168439, Memorandum Opinion and Order, DA 23-1210, at 6-7, para. 10 (WTB/OEA Dec. 29, 2023) (*T-Mobile-Channel 51-LB License Order*); *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*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 (2019) (*T-Mobile-Sprint Order*); *see also Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6136, para. 6 (2014) (*Mobile Spectrum Holdings Report and Order*).

[29] 47 U.S.C. § 310(d); *see, e.g.*, *Applications of Liberty America Ltd. And DISH Network Corporation for Consent to Assignment of Spectrum Licenses, Asserts, and Customers of DISH Network Corporation to Liberty Latin America*

(continued….)

whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[30] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[31] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[32]

9. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[33] The Commission has determined that it may impose and enforce transaction-specific conditions that address potential harms of a transaction.[34] 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.[35]

10. *Qualifications of the Applicants*. Section 310(d) of the Act requires that we make a determination as to whether the Applicants have the requisite qualifications to hold Commission licenses.[36] Therefore, as a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualification requirements to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[37] Because no party has questioned the basic qualifications of T-Mobile or HTC, 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

11. 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.[38] Regarding mobile spectrum

(Continued from previous page)
Ltd. in Puerto Rico and the U.S. Virgin Islands, GN Docket No. 24-55, Memorandum Opinion and Order and Declaratory Ruling, DA 24-783, at 4-5, para. 9 (OIA/WTB Aug. 9, 2024) (*Liberty Latin America-DISH Order*); *T-Mobile-Channel 51-LB License Order* at 6-7, para. 10; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39.

[30] *See, e.g.*, *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Order* at 6-7, para. 10; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40.

[31] *See, e.g.*, *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Order* at 6-7, para. 10; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6239, para. 285.

[32] *See, e.g.*, *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Order* at 6-7, para. 10.

[33] *See, e.g.*, *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Order* at 7, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40.

[34] *See, e.g.*, *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Order* at 7, para. 11.

[35] 47 U.S.C. § 309(e); *see, e.g.*, *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Order* at 7, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

[36] 47 U.S.C. § 310(d). Among the factors that the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications." *Id.*; *see, e.g.*, *Liberty Latin America-DISH Order* at 5, para. 11; *T-Mobile-Channel 51-LB License Order* at 7-8, para. 12; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43.

[37] 47 U.S.C. § 310(d); *see, e.g.*, *T-Mobile-Channel 51-LB License Order* at 7-8, para. 12; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43.

[38] *See, e.g.*, *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Order* at 10-11, para. 20; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617, para. 94; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88.

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.[39] When examining 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.[40] In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.[41]

12. *Record.* The Applicants contend that both the Spectrum Swap and Spectrum Assignment transactions will not reduce the number of competitors, service offerings, or customer choices in the affected markets, nor will they raise any spectrum aggregation, competitive, or public interest concerns.[42]

13. EchoStar asserts that the Commission, as part of its public interest analysis, should consider:[43] (1) 600 MHz spectrum aggregation outside of the 600 MHz spectrum at issue; and (2) spectrum aggregation more generally, including other Cellular Market Areas (CMAs) not implicated by these transactions.[44] EchoStar also contends that T-Mobile would harm competition in the specific markets involved in these transactions because it would then control almost all of the 600 MHz blocks of spectrum in these markets.[45] EchoStar concludes that the Commission should either deny the proposed transactions or hold them in abeyance until after the Commission has completed a separate rulemaking regarding its mobile spectrum holdings policies.[46]

14. Regarding 600 MHz spectrum aggregation, EchoStar urges the Commission to consider other transactions pursuant to which T-Mobile has been or potentially would be assigned more low-band 600 MHz spectrum.[47] EchoStar argues that these transactions, including the instant transactions, will allow T-Mobile to dominate this band to the detriment of competition.[48] EchoStar also argues that

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[39] *See, e.g.*, *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Order* at 10-11, para. 20; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6144, para. 17.

[40] *See, e.g.*, *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Order* at 10-11, para. 20; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617-18, para. 94.

[41] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[42] Spectrum Swap Public Interest Statement at 4; Spectrum Assignment Public Interest Statement at 4; *see also* HTC Opposition at 4; HTC Presentation Summary at 2; T-Mobile Opposition at 2.

[43] EchoStar states that its subsidiaries hold 600 MHz spectrum in the markets that are the subject of these transactions and that they compete with T-Mobile in the nationwide and local mobile wireless industries. EchoStar states that it is therefore a party of interest under section 309(d)(1) of the Communications Act (citing 47 U.S.C. § 309(d)(1)). EchoStar Petition to Deny at 1 & n.1.

[44] EchoStar Presentation Summary at 1, 3-4; *see also* EchoStar Petition to Deny at 3, 6-8, 10-11.

[45] EchoStar Presentation Summary at 3.

[46] EchoStar Presentation Summary at 4-5. In EchoStar's petition to deny and reply, however, it argues only for denial of the transactions. EchoStar Petition to Deny at 3, 6; EchoStar Reply at 2, 4.

[47] In particular, EchoStar notes that in December 2023, WTB and OEA (Bureaus) granted the applications that assigned 600 MHz spectrum licenses from Channel 51 License Company LLC (Channel 51) and LB License Co, LLC (LB License) to T-Mobile. EchoStar Petition to Deny at 2. EchoStar also points to a T-Mobile statement that it intends to purchase 600 MHz spectrum from Comcast, which EchoStar argues is further evidence of T-Mobile attempting to foreclose competitors from using this band. EchoStar Petition to Deny at 4; EchoStar Reply at 3 & n.16; EchoStar Presentation Summary at 3.

[48] EchoStar Petition to Deny at 4; EchoStar Reply at 3 & n.16; EchoStar Presentation Summary at 3.

allowing T-Mobile to acquire contiguous blocks of spectrum would leave other providers with sub-optimal, non-contiguous 600 MHz licenses that are more difficult to combine.[49] EchoStar asserts that, in order for competitors to make the best use of multiple 600 MHz licenses, especially for uplink, there must be available contiguous 600 MHz blocks.[50] EchoStar contends that T-Mobile has reached its dominant position by strategically buying up contiguous blocks in the 600 MHz band thereby foreclosing competition.[51] EchoStar further argues that granting T-Mobile even more 600 MHz spectrum by approving these transactions, "would contravene the Commission's competition-related spectrum licensing objectives by enabling T-Mobile to inhibit other competitors from fully utilizing any holdings in the band."[52]

15. As noted, EchoStar also requests that the Commission consider in its public interest analysis the implications of spectrum aggregation concerning CMAs that are not the subject of the instant transactions.[53] According to EchoStar, T-Mobile currently exceeds the spectrum screen in 195 CMAs nationwide and has more than one-third of below-1-GHz spectrum in 140 CMAs.[54] In EchoStar's petition, it refers to the *T-Mobile-Channel 51-LB License Order* that has a list of 48 CMAs in which T-Mobile exceeds the spectrum screen trigger.[55]

16. Regarding the specific markets involved in these transactions, EchoStar contends that the approval of the transactions will permanently harm competition in the Carolinas because T-Mobile would be permitted to control almost all of the 600 MHz spectrum blocks in the two Partial Economic Areas (PEAs) that are implicated in these transactions.[56] Specifically, in the Myrtle Beach, SC market (PEA 154), T-Mobile will have six contiguous 600 MHz spectrum blocks out of seven and five contiguous 600 MHz blocks out of seven in the Kannapolis, NC market (PEA 239) (leaving only two non-contiguous blocks remaining in PEA 239).[57] EchoStar concludes that these latest applications follow T-Mobile's consistent pattern of spectrum aggregation and foreclosure of competition and therefore the Commission should either deny the transactions or hold them in abeyance until the Commission completes its separate rulemaking regarding its mobile spectrum holdings policies.[58]

17. In response, T-Mobile contends that EchoStar's arguments concerning 600 MHz spectrum aggregation and competition are not transaction-specific.[59] T-Mobile further asserts that a 600

[49] EchoStar Petition to Deny at 8.

[50] EchoStar Petition to Deny at 7-9 (referencing T-Mobile's Public Interest Statement regarding the benefits of contiguous blocks of 600 MHz spectrum). *See infra* Public Interest Benefits section (T-Mobile's arguments concerning the benefits post-transactions, and in particular, contiguous 600 MHz spectrum blocks).

[51] EchoStar Petition to Deny at 6-7; EchoStar Presentation Summary at 1, 3; *see also* EchoStar Reply at 2-4.

[52] EchoStar Petition to Deny at 7.

[53] EchoStar Petition to Deny at 10-11; EchoStar Presentation Summary at 3.

[54] EchoStar Presentation Summary at 3; EchoStar Petition to Deny at 10-11 & n.28 (stating that these estimates are based on T-Mobile's spectrum holdings excluding the instant transactions, but including any 800 MHz spectrum it holds and recently awarded 2.5 GHz licenses from Auction 108).

[55] EchoStar Petition to Deny at 10 (citing Appendix A in the *T-Mobile-Channel 51-LB License Order*).

[56] EchoStar Presentation Summary at 3.

[57] EchoStar Petition to Deny at 2, 7-9; *see also* EchoStar Presentation Summary at 3.

[58] EchoStar Presentation Summary at 1-5 (EchoStar argues for only denial of the transactions in its petition to deny and reply).

[59] T-Mobile Opposition at 8; T-Mobile Presentation Summary at 2.

MHz band-specific examination is in contravention of the Commission's wireless transaction review.[60] T-Mobile states that, as part of the Commission's review, it considers all spectrum it deems suitable and available and does not focus on spectrum aggregation within a single band.[61] Pointing to the *T-Mobile-Channel 51-LB License Order*,[62] T-Mobile notes that the Bureaus dismissed a similar argument on the ground that the aggregations of spectrum in a single band was an issue of broad applicability.[63] In addition, T-Mobile maintains that EchoStar's arguments concerning T-Mobile's spectrum holdings in markets not impacted by the proposed transactions are outside the scope of the Commission's review and therefore should not be considered.[64]

18. T-Mobile argues that neither transaction will result in any diminution in competition or loss of a provider and all of the nationwide providers will continue to be present in the implicated markets.[65] According to T-Mobile, these competitors clearly possess sufficient spectrum assets to support robust 4G LTE and 5G-NR services, ensuring a high degree of competition.[66] Moreover, T-Mobile asserts that competition is not limited to mobile services supported by 600 MHz spectrum and providers utilize different spectrum portfolios to support 5G deployments.[67]

19. T-Mobile and HTC maintain that two of the applications are for a spectrum swap in which T-Mobile's spectrum holdings post-transaction will generally decline.[68] In particular, T-Mobile and HTC assert that the spectrum swap will decrease T-Mobile's previously approved low-band spectrum holdings (as well as its overall holdings) in three of the four impacted counties in Myrtle Beach, SC market (PEA 154).[69] T-Mobile and HTC contend that in the one county in which T-Mobile will increase its below-1-GHz spectrum holdings because of the spectrum swap, "it will exceed the low-band screen by only a *de minimis* amount."[70] Regarding the spectrum assignment in Kannapolis, NC market (PEA 239), T-Mobile asserts that post-transaction there will be "only a minor low-spectrum screen overage in two counties."[71]

20. *Discussion*. Following long-established precedent, the Commission in its public interest analysis examines, among other considerations, the spectrum holdings in the particular markets involved in the proposed transaction, and it evaluates the potential public interest harms and the likely public

[60] T-Mobile Opposition at 2, 5.

[61] T-Mobile Opposition at 2, 5.

[62] Regarding the T-Mobile/Channel 51-LB License transaction, DISH submitted filings in the docket for that transaction. After that order was released on December 29, 2023, EchoStar completed its acquisition of DISH on December 31, 2023, and DISH became a wholly owned subsidiary of EchoStar. *See* EchoStar Corporation, SEC Form 10-K, at i, 1-2 (filed Feb. 29, 2024); *see also* Press Release, EchoStar, EchoStar Corporation Completes Merger with DISH Network Corporation (Jan. 2, 2024), https://ir.echostar.com/news-releases/news-release-details/echostar-corporation-completes-merger-dish-network-corporation.

[63] T-Mobile Opposition at 3-4, 8; T-Mobile Presentation Summary at 1-2.

[64] T-Mobile Opposition at 9; T-Mobile Presentation Summary at 2.

[65] T-Mobile Opposition at 5; *see also* Spectrum Assignment Public Interest Statement at 5; Spectrum Swap Public Interest Statement at 6.

[66] T-Mobile Opposition at 5.

[67] T-Mobile Opposition at 5.

[68] T-Mobile Opposition at 6; HTC Opposition at 3.

[69] T-Mobile Opposition at 6; HTC Opposition at 3.

[70] T-Mobile Opposition at 1-2, 6; HTC Opposition at 3.

[71] T-Mobile Opposition at 2, 7.

interest benefits.[72] When analyzing the potential competitive effects of a proposed transaction, the Commission consistently has analyzed the specific markets implicated in the transaction at issue.[73] Moreover, in the *Mobile Spectrum Holdings Report and Order*, the Commission noted that, while the aggregation of 600 MHz band spectrum by means of secondary market transactions may have the potential to exacerbate concerns regarding below-1-GHz spectrum concentration, this must be balanced against the Commission's general policy of promoting flexibility in secondary market transactions.[74]

21. We note as a preliminary matter that some of the markets discussed by EchoStar are not subject to the instant transactions. The Commission does not consider as part of its public interest analysis of proposed transactions spectrum aggregation regarding CMAs that are not involved in the transaction at issue. In addition, several of EchoStar's arguments raise more general competition issues within the broader context of T-Mobile's spectrum holdings nationwide, as well as T-Mobile's previously consented-to and potential future transactions. Consistent with Commission precedent, we review only the transaction before us, and we do not find that these particular transactions exhibit national characteristics that provide cause for concern. Accordingly, we focus on the local markets at issue in the instant proposed transactions in our analysis.[75] Nor has EchoStar provided detailed evidence to support its claim that T-Mobile is strategically foreclosing other entities from acquiring contiguous blocks of 600 MHz spectrum. Further, the Commission has not adopted a band-specific limit either on 600 MHz spectrum or on any other band included in the spectrum screen in its review of proposed secondary market transactions,[76] and we decline to do so here.

22. For these reasons and those set forth below with regard to the particular markets at issue, we do not find there is a sufficient basis for denying the proposed transactions. We also decline to hold these applications in abeyance, as requested by EchoStar, pending the completion of a separate proceeding regarding the Commission's mobile spectrum holdings policies more generally.[77] While EchoStar puts forth certain arguments that are not specific to the markets in these transactions, we note that the broader subjects it raises, such as overall 600 MHz spectrum aggregation and the concomitant competition-related issues, could also potentially be raised in the context of a separate rulemaking.

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[72] *See, e.g.*, *Liberty Latin America-DISH Order*, DA 24-783; *T-Mobile-Channel 51-LB License Order*, DA 23-1210; *Verizon-TracFone Order*, 36 FCC Rcd 16994; *T-Mobile-Sprint Order*, 34 FCC Rcd 10578; *AT&T-Leap Order*, 29 FCC Rcd 2735; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al*., WT Docket No. 04-70, File Nos. 0001656065, et al., Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) (*Cingular-AT&T Wireless Order*).

[73] *See, e.g.*, *Liberty Latin America-DISH Order* at 5-13, paras. 12-27; T-*Mobile-Channel 51-LB License Order* at 10-33, paras. 20-88; *Verizon-TracFone Order*, 36 FCC Rcd at 17003-25, paras. 26-71; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611-12, 10654-61, paras. 79-80, 178-88; *AT&T-Leap Order*, 29 FCC Rcd at 2745-82, paras. 20-102; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21564-86, 21593-99, paras. 95-165, 184-200.

[74] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6212, para. 198.

[75] In the *Mobile Spectrum Holdings Report and Order*, the Commission declined to adopt a nationwide spectrum screen, noting that it was in the public interest to continue to define local geographic markets but also to analyze potential national effects as appropriate. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6232, para. 263 (agreeing that "a nationwide screen would either be redundant or create irrational incentives for providers to divest or to forego acquisition of spectrum in markets in which there would be a net public benefit from such an acquisition," but noting that the Commission "will continue to analyze the potential competitive effects of those secondary market transactions that exhibit national characteristics").

[76] *See, e.g*., T-*Mobile-Channel 51-LB License Order* at 14, para. 30.

[77] A public notice was released by the Bureaus seeking comment on an AT&T petition for rulemaking and mobile spectrum holdings policies more broadly. *Wireless Telecommunications Bureau and Office of Economics and Analytics Seek Comment on AT&T Petition for Rulemaking and Mobile Spectrum Holdings Policies*, WT Docket No. 23-319, RM-11966, Public Notice, DA 23-891 (WTB/OEA Sept. 22, 2023).

23. Following long-standing Commission precedent, in our competitive analysis, we first define the relevant product and geographic markets and the input market for spectrum, and then we identify the current market participants. As part of our competitive analysis, we apply our initial spectrum screen to help identify markets of potential concern.[78] Because of the increase in spectrum holdings below 1 GHz post-transaction, whereby T-Mobile would hold more than one-third of the suitable and available spectrum below 1 GHz, we apply enhanced factor review. We then undertake our market-by-market analysis that evaluates the likelihood of competitive harm in the markets implicated by these transactions to ensure that the public interest, convenience, and necessity is served. As discussed in detail below, we find that, post-transaction, the likelihood of competitive harm is low in the markets that are the subject of these transactions.

A. Market Definitions and Market Participants

24. 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).[79] The Commission has previously found that the geographic market for wireless transactions is local, generally the CMA.[80] The Commission also has found, however, 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.[81] For this proposed transaction, we continue to use CMAs as the appropriate local market for analyzing potential spectrum aggregation issues.[82] Regarding the input market for spectrum, the Commission has previously determined that the following bands, or portions thereof, meet the definition of suitable and available and should be included: 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 band (AWS-1), AWS-3, AWS in the 2000-2020 MHz and 2180-2200 MHz spectrum bands (AWS-4), Broadband Radio Service (BRS), Wireless Communications Service (WCS) spectrum, H Block, Educational Broadband Service (EBS), 3.7 GHz, and 3.45 GHz.[83] Consistent with Commission precedent, we focus on facilities-based entities providing mobile telephony/broadband services using the spectrum bands included in the spectrum screen.[84]

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[78] *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231 (stating that the spectrum screen is only the first step in our competitive evaluation).

[79] *See, e.g.*, *Liberty Latin America-DISH Order* at 6, para. 15; *T-Mobile-Channel 51-LB License Order* at 14-15, para. 32; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10601, 10603, paras. 55, 60.

[80] *See, e.g.*, *Liberty Latin America-DISH Order* at 6-7, para. 16; *T-Mobile-Channel 51-LB License Order* at 15, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, para. 66.

[81] *See, e.g.*, *T-Mobile-Channel 51-LB License Order* at 15, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10606, para. 66.

[82] *See, e.g.*, *T-Mobile-Channel 51-LB License Order* at 15, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, 10607, paras. 66, 69.

[83] *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*); *see also Liberty Latin America-DISH Order* at 7, para. 17; *T-Mobile-Channel 51-LB License Order* at 15, para. 34; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10607, para. 70; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, 6177-79, 6184-87, paras. 70, 100-102, 118-25.

[84] *See, e.g.*, *Liberty Latin America-DISH Order* at 7, para. 18; *T-Mobile-Channel 51-LB License Order* at 16, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73. In addition, we recognize that mobile virtual network operators may provide additional competitive constraints, which we account for in our evaluation of the likely

(continued….)

B. Competitive Analysis of the Proposed Transactions

1. Initial Screen

25. To help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen. The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.[85] Because there is no change in the HHI, since there is no transfer of customers, we do not apply the HHI screen.[86] The second part of the screen, which is applied on a county-by-county basis, identifies those local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services post-transaction.[87] Post-transaction, as a result of the Spectrum Assignment, T-Mobile would hold one-third or more of the total suitable and available spectrum in one CMA: CMA 579 (North Carolina 15–Cabarrus).[88]

26. In the *Mobile Spectrum Holdings Report and Order*, the Commission determined that any increase in spectrum holdings below 1 GHz would be treated as an "enhanced factor" for case-by-case review if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.[89] Post-transaction, T-Mobile would hold one-third or more of the total suitable and available spectrum below 1 GHz in one CMA in the Spectrum Assignment and one CMA in the Spectrum Swap: CMA 579 (North Carolina 15–Cabarrus)[90] and CMA 628 (South Carolina 4–Chesterfield), respectively.[91] These two markets are subject to enhanced factor review as set forth in paragraph 286 of the *Mobile Spectrum Holdings Report and Order*.[92]

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competitive effects. *See, e.g.*, *Liberty Latin America-DISH Order* at 7, para. 18; *T-Mobile-Channel 51-LB License Order* at 16, para. 35 & n.128; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73.

[85] 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.*, *Liberty Latin America-DISH Order* at 8, para. 19 & n.49; *T-Mobile-Channel 51-LB License Order* at 16, para. 36 & n.129; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87 & n.277.

[86] Spectrum Swap Public Interest Statement at 2; Spectrum Assignment Public Interest Statement at 2.

[87] *See, e.g.*, *Liberty Latin America-DISH Order* at 8, para. 19; *T-Mobile-Channel 51-LB License Order* at 16, para. 36; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87. 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. *2022 Communications Marketplace Report*, 37 FCC Rcd at 15578-79, paras. 84-85, Fig. II.B.9. We note that 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. *Id.* at 15578-79, para. 84 & n.216.

[88] *See* Spectrum Assignment T-Mobile Spectrum Aggregation Exhibit.

[89] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6238-40, paras. 267, 282-88.

[90] *See* Spectrum Assignment T-Mobile Spectrum Aggregation Exhibit.

[91] *See* Spectrum Swap T-Mobile Spectrum Aggregation Exhibit.

[92] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286; *see, e.g.*, *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership For Consent To Assign Licenses*, WT Docket No. 14-145, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13066, para. 24 (2015) (*AT&T-Club 42 Order*); *Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, WT Docket No. 14-144, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5114 para. 15 (2015) (*AT&T-Plateau Wireless Order*). The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum
(continued….)

2. Market-by-Market Analysis

27. Consistent with existing Commission precedent,[93] we consider various competitive variables that help to predict the likelihood of competitive harm as a result of the proposed transaction. 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;[94] the rival firms' market shares;[95] the applicant's market share; the total amount of spectrum available;[96] the amount of spectrum suitable for the provision of mobile

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in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287.

[93] *See, e.g., Liberty Latin America-DISH Order* at 10, para. 23; *T-Mobile-Channel 51-LB License Order* at 16-17, para. 38; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10620-23, paras. 101, 106.

[94] We base the coverage analysis on providers' coverage data they submitted pursuant to the Broadband Data Collection 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). For 4G LTE, these data are based on speed thresholds of 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 7/1 Mbps and 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.

[95] We base providers' market shares analysis on December 2023 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 Applications of T-Mobile License LLC, Nextel West Corp., And LB License Co., LLC For License Assignment; Application of T-Mobile License LLC, Nextel West Corp., And Channel 51 License Company LLC For License Assignment; Numbering Resource Utilization and Forecast (NRUF) Reports And Local Number Portability (LNP) Reports Placed Into the Record, Subject to the Protective Order*, CC Docket 99-200, ULS File Nos. 0010168412, 0010168420, 0010168439, Public Notice, DA-23-1183 (WTB/OEA Dec. 19, 2023). 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.

[96] The total amount of suitable and available spectrum in the total spectrum screen is 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 millimeter wave (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.

telephony/broadband services controlled by the applicant; and the spectrum holdings of each of the rival service providers and licensees.[97]

28. As discussed, there are two local markets that we have identified for our market-by-market review: for the Spectrum Assignment, CMA 579 (North Carolina 15–Cabarrus); and for the Spectrum Swap, CMA 628 (South Carolina 4–Chesterfield).

29. Regarding North Carolina 15–Cabarrus, we note that it is a non-rural market with a population of 664,588 and a population density of 312 people per square mile.[98] Through the acquisition of 10 megahertz of 600 MHz spectrum from HTC in Cabarrus and Stanly Counties, covering approximately 43% of the population in North Carolina 15–Cabarrus, T-Mobile would hold 338.5 to 390 megahertz of spectrum on a county-by-county basis in this market post-transaction, while Verizon holds 332 megahertz, AT&T holds 260 megahertz, and EchoStar holds 96 to 101 megahertz. In addition, Carolina West Wireless holds 10 to 20 megahertz in Davie, Iredell, and Rowan Counties.[99] In terms of spectrum below 1 GHz, T-Mobile would acquire 10 megahertz of 600 MHz spectrum from HTC in Cabarrus and Stanly Counties, which means that it would hold 66 to 76 megahertz on a county-by-county basis in this market post-transaction, while Verizon holds 72 megahertz, AT&T holds 30 megahertz, and EchoStar holds 16 megahertz. In addition, Carolina West Wireless holds 10 to 20 megahertz of spectrum below 1 GHz in Davie, Iredell, and Rowan Counties in this market.

30. Regarding coverage in this market, AT&T, T-Mobile, and Verizon each have significant 4G LTE population and land area coverage at speeds of at least 5/1 Mbps in North Carolina 15–Cabarrus.[100] In addition, T-Mobile, Verizon, and EchoStar have significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps in this market, while AT&T has deployed its 5G-NR network at speeds of at least 7/1 Mbps to some extent.[101] In terms of significant market shares, AT&T holds {[ ]} %, T-Mobile holds {[ ]} %, and Verizon holds {[ ]} % in North Carolina 15–Cabarrus. No other service providers have a significant market share in this market.

31. Notwithstanding the fact that T-Mobile would hold more than one-third of the below-1-GHz spectrum post-transaction,[102] as well as more than one-third of the *total* suitable and available

[97] *See, e.g.*, *Liberty Latin America-DISH Order* at 10, para. 23; *T-Mobile-Channel 51-LB License Order* at 19, para. 43; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10621, para. 102; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238, para. 280.

[98] 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).

[99] Note that Tristar holds 5 megahertz of AWS-3 spectrum in Davie County, NC.

[100] 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.*, *Liberty Latin America-DISH Order* at 11, para. 25 & n.78; *T-Mobile-Channel 51-LB License Order* at 18-19, para. 42 & n.150.

[101] In terms of 5G-NR coverage at speeds of at least 35/3 Mbps in North Carolina 15–Cabarrus, T-Mobile has significant population coverage and close-to-significant land area coverage, Verizon has significant population and land area coverage, and AT&T has deployed its network to some extent. In addition, EchoStar has significant 5G-NR population and land area coverage at speeds of at least 35/3 Mbps in this market.

[102] The Commission stated in the *Mobile Spectrum Holdings Report and Order* that, in these cases, it anticipated "that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms." *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286. The potential public interest benefits associated with the acquisition of this low-band spectrum by T-Mobile are evaluated in section V. *See infra* Public Interest Benefits section.

spectrum post-transaction, we find that the likelihood of competitive harm is low in North Carolina 15–Cabarrus when evaluating the particular factors ordinarily considered.[103] Specifically, we note that three other service providers—AT&T, Verizon, and EchoStar—hold low-band spectrum in this market. Also, AT&T, Verizon, and EchoStar each hold substantial amounts of spectrum in total in addition to their low-band spectrum holdings, and there are additional licensees that also hold spectrum in North Carolina 15–Cabarrus. Further, AT&T and Verizon each have a significant market share and significant 4G LTE population and land area coverage at speeds of at least 5/1 Mbps. Moreover, Verizon and EchoStar each have significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps and at least 35/3 Mbps, while AT&T has deployed its 5G-NR network at speeds of at least 7/1 Mbps and at least 35/3 Mbps to some extent. For these reasons, we find that the acquisition of the additional low-band spectrum in the Spectrum Assignment that triggers enhanced factor review as well as the total spectrum screen is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of T-Mobile in this local market. We find it highly unlikely that T-Mobile's spectrum acquisition in the Spectrum Assignment would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

32. Turning to South Carolina 4–Chesterfield, we note that it is a rural market with a population of 226,540 and a population density of 76 people per square mile. Through the acquisition of 20 megahertz of 600 MHz spectrum from HTC in Dillon County, covering approximately 12% of the population in South Carolina 4–Chesterfield, T-Mobile would hold 330 to 360 megahertz of spectrum on a county-by-county basis in this rural market post-transaction, and HTC would hold 92 megahertz of spectrum in Dillon County.[104] Further, AT&T holds 230 to 250 megahertz of spectrum, Verizon holds 312 to 382 megahertz, and EchoStar holds 101 megahertz. In addition, FTC Wireless holds 60 to 70 megahertz of spectrum in Darlington and Kershaw Counties, Omega holds 40 megahertz in Chesterfield and Marlboro Counties, and UScellular holds 10 megahertz in Chesterfield and Marlboro Counties in this market. In terms of spectrum below 1 GHz, through the acquisition of 20 megahertz of 600 MHz spectrum from HTC in Dillon County, T-Mobile would hold 56 to 76 megahertz on a county-by-county basis in this rural market post-transaction, and HTC would hold 12 megahertz in Dillon County. In addition, AT&T holds 30 megahertz of spectrum below 1 GHz, Verizon holds 72 megahertz, EchoStar holds 16 megahertz, and FTC Wireless holds 20 to 30 megahertz in Darlington and Kershaw Counties in this rural market.

33. Regarding coverage in this rural market, AT&T, T-Mobile, and Verizon each have significant 4G LTE population and land area coverage at speeds of at least 5/1 Mbps in South Carolina 4–Chesterfield. In addition, T-Mobile has significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps, while AT&T and Verizon have deployed their 5G-NR networks at speeds of at least 7/1 Mbps to some extent.[105] In addition, EchoStar has deployed its 5G-NR network at speeds of at least 7/1 Mbps to some extent in this market. In terms of significant market share, AT&T holds {[ ]} %, T-Mobile holds {[ ]} %, and Verizon holds {[ ]} % in South Carolina 4–Chesterfield. No other service providers have a significant market share in this market.

[103] *See, e.g.*, *AT&T-Club 42 Order*, 30 FCC Rcd at 13072, para. 36; *AT&T-Plateau Order*, 30 FCC Rcd at 5123, para. 36.

[104] T-Mobile will assign 25 megahertz of cellular spectrum to HTC, and HTC will assign 20 megahertz of 600 MHz spectrum to T-Mobile in Georgetown, Horry, and Marion Counties in CMA 629 (South Carolina 5–Georgetown). HTC does not trigger either the total spectrum screen or enhanced factor review.

[105] In terms of 5G-NR coverage at speeds of at least 35/3 Mbps, AT&T, T-Mobile, and Verizon have deployed their networks to some extent in South Carolina 4–Chesterfield. In addition, EchoStar has deployed its 5G-NR network at speeds of at least 35/3 Mbps to some extent in this market.

34. Given these facts, we find that the likelihood of competitive harm is low in South Carolina 4–Chesterfield. Specifically, we note that AT&T, Verizon, and EchoStar hold low-band spectrum in this market. In addition, AT&T and Verizon each have a significant market share, significant 4G LTE population and land area coverage at speeds of at least 5/1 Mbps, and have deployed their 5G-NR networks at speeds of at least 7/1 Mbps and at least 35/3 Mbps to some extent in this market. For these reasons, we find that the acquisition of the additional low-band spectrum in the Spectrum Swap is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of T-Mobile in this local market.

V. POTENTIAL PUBLIC INTEREST BENEFITS

35. 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."[106] 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 transaction[107]—and verifiable.[108] Further, the Commission is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost"[109] 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.[110] The Commission applies a "sliding scale approach" to evaluating benefit claims.[111] 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."[112] Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.[113]

36. *Record.* Regarding the Spectrum Assignment, T-Mobile asserts that the transaction will allow it to serve the market more robustly and become a stronger competitor.[114] Specifically, T-Mobile claims that the 600 MHz spectrum acquired via the transaction, coupled with its existing 600 MHz

[106] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

[107] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

[108] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

[109] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

[110] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

[111] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89.

[112] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89.

[113] *See, e.g.*, *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Order* at 33-34, para. 89.

[114] Spectrum Assignment Public Interest Statement at 3; T-Mobile Opposition at 10.

holdings in the market, will enable it to provide additional capacity and increased data throughput speeds to its customers.[115] Further, T-Mobile argues that the resulting augmented block of 600 MHz spectrum will improve its network reliability, enable extended cell reach and coverage in areas that include rural, underserved locations, and result in improved building penetration to better serve metropolitan customers in more urban areas.[116] T-Mobile also claims that the additional spectrum it acquires will allow it to expand its fixed wireless services.[117]

37. Regarding the Spectrum Swap, T-Mobile and HTC assert that the transaction will allow T-Mobile and HTC to become stronger competitors by offering improved services to their customers.[118] Specifically, T-Mobile claims that it will hold larger blocks of contiguous 600 MHz spectrum post-transaction, allowing it to use the spectrum more efficiently and improve the quality and reliability of its service to customers.[119] Additionally, T-Mobile asserts that operating on contiguous blocks of spectrum will allow it to provide its customers with improved data throughput speeds and greater capacity.[120] Similar to its arguments for the Spectrum Assignment, T-Mobile argues that extended cell reach and improved building penetration will enable it to better serve both rural and urban areas, and the additional spectrum it acquires will allow it to expand its fixed wireless services.[121] Relatedly, HTC claims that the spectrum it acquires in the transaction will allow it to provide faster speeds and additional capacity to its customers,[122] specifically noting the benefits to its customers in rural areas.[123]

38. EchoStar claims that T-Mobile undermines its own claims that the transactions will serve the public interest by allowing T-Mobile to provide better service because T-Mobile has repeatedly claimed that it already has the broadest, deepest, and most advanced 5G network in the United States.[124] Additionally, EchoStar claims that any potential benefits to consumers from increased spectrum concentration should be weighed against the harms to consumers in foreclosing competitors from this scarce resource.[125] EchoStar argues that such concentration has failed to make T-Mobile a more price conscious competitor and cites to its recent price increase.[126]

39. *Discussion*. We have reviewed the benefits asserted by T-Mobile and HTC in the Public Interest Statements, as well as their supplemental filings. Regarding the spectrum being acquired by T-Mobile in both the Spectrum Assignment and Spectrum Swap, we note that the 600 MHz spectrum at issue provides additional capacity, greater data throughput speeds, improved network reliability, and extended cell reach and building penetration to serve low population density rural areas as well as metropolitan customers in more urban areas. We credit as a public interest benefit that consumers are

[115] Spectrum Assignment Public Interest Statement at 3; T-Mobile Opposition at 10; T-Mobile Presentation Summary at 2.

[116] Spectrum Assignment Public Interest Statement at 3; T-Mobile Opposition at 10; T-Mobile Presentation Summary at 2.

[117] T-Mobile Presentation Summary at 2.

[118] Spectrum Swap Public Interest Statement at 4.

[119] Spectrum Swap Public Interest Statement at 4, 6; T-Mobile Opposition at 9.

[120] Spectrum Swap Public Interest Statement at 4, 6.

[121] T-Mobile Presentation Summary at 2.

[122] HTC Opposition at 4; HTC Presentation Summary at 2.

[123] HTC Opposition at 4.

[124] EchoStar Presentation Summary at 4.

[125] EchoStar Presentation Summary at 4.

[126] EchoStar Presentation Summary at 4.

receiving greater capacity, speed, and reliability benefits and expanded competition from this deployment, and that T-Mobile, through this spectrum acquisition, will continue to deploy and enhance its 5G network.

40. Regarding the spectrum being acquired by HTC in the Spectrum Swap, we note that the spectrum at issue provides additional capacity and improved speeds to serve rural customers. We credit as a public interest benefit that consumers are receiving greater capacity and speed benefits and expanded competition from this deployment, and that HTC, through this spectrum acquisition, will continue to deploy and enhance its network. In addition, HTC is a non-nationwide service provider and the Commission has previously found that such providers offer consumers additional choices in the areas they serve and provide some constraint on the ability of nationwide providers to act in anticompetitive ways to the detriment of consumers.[127] Further, the Commission has previously found that promoting competition by non-nationwide service providers also advances the statutory goals of avoiding excessive concentration of licenses, disseminating licenses among a wide variety of applicants, and encouraging rapid deployment of new wireless broadband technologies to all Americans, including those residing in rural areas.[128] We therefore find that the record provides support for T-Mobile's and HTC's assertions that the proposed transactions would result in certain verifiable, transaction-specific public interest benefits.

VI. CONCLUSION

41. Based on our review of the record and our market-by-market analysis, we find that the likelihood of competitive harm is low in the markets that are the subject of these transactions, despite T-Mobile's increase in total spectrum holdings and low-band spectrum holdings. Specifically, in both North Carolina 15–Cabarrus and South Carolina 4–Chesterfield, we find that the transactions are unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of T-Mobile. Further, we have reviewed T-Mobile's and HTC's claims regarding the benefits they allege would result, and we find that the record provides general support that certain public interest benefits will be realized. We disagree with EchoStar that the proposed assignments would disserve the public interest. Thus, based on the record before us and our competitive review, we find that T-Mobile and HTC have demonstrated that the proposed transactions would serve the public interest, convenience, and necessity.

VII. ORDERING CLAUSES

42. Accordingly, having reviewed the applications and record in this matter, **IT IS ORDERED** that, pursuant to sections 4(i-j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i-j), 303(r), 309, 310(d), the applications for consent to assignments filed by HTC and T-Mobile **ARE GRANTED**.

43. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the Petition to Deny filed by EchoStar is **DENIED** for the reasons stated herein.

44. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon adoption. Petitions for Reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the date of adoption of this Memorandum Opinion and Order.

[127] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, para. 179.

[128] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, para. 179.

45. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Giulia McHenry
Chief, Office of Economics and Analytics

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7129747
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 24, 2024 **Released: September 24, 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. 7129747 (filed July 1, 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 to Clear Rate from Verizon without his authorization.[9] In the complaint, Complainant explained that he "received a call around 20 June 2024 from what I thought to be Verizon. They said they were a supplier for Verizon's small business division and [were] calling to reduce our total bill amount due to recent losses in revenue."[10] Complainant stated that he "attempted to verify that they were with Verizon. I looked up the phone number which came up as Verizon through a google search as well as on the caller ID."[11] According to Complainant, "they continued to assure me that they were with Verizon. They even claimed that there were things on my account that prevented any changes from being made that would take us away from Verizon."[12]

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.[13] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[14] 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."[15] We therefore find

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7129747.

[10] *Id*.

[11] *Id.*

[12] *Id.*

[13] 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.

[14] *See* Clear Rate Response to Informal Complaint No. 7129747 (filed July 19, 2024) (*Clear Rate Response*); *see also* 47 CFR § 64.1160.

[15] *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.[16]

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.[17] 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.[18] 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.[19]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

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misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

[16] 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.

[17] *See id.* § 64.1160(b).

[18] *See id.* § 64.1160(d).

[19] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7042132
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 24, 2024 **Released: September 24, 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. 7042132 (filed May 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 without his authorization.[9] In the complaint, Complainant stated that they "had received a call from someone who identified themselves as working for Verizon, offering to reduce our monthly charge . . . with no interruption in service. They repeatedly reassured me that they worked for Verizon and there would be no interruption in service, otherwise I would not have allowed the change."[10]

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.[11] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[12] 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."[13] 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.[14]

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7042132.

[10] *Id*.

[11] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

[12] *See* Clear Rate Response to Informal Complaint No. 7042132 (filed May 21, 2024) (*Clear Rate Response*); *see also* 47 CFR § 64.1160.

[13] *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)).

[14] 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

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.[15] 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.[16] 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.[17]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

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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.

[15] *See id.* § 64.1160(b).

[16] *See id.* § 64.1160(d).

[17] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7031052
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 24, 2024 **Released: September 24, 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. 7031052 (filed May 15, 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 without his authorization.[9] In the complaint, Complainant explained that the Clear Rate representative stated that "they were with Verizon and handling their small business accounts."[10]

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.[11] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[12] 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."[13] 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.[14]

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7031052.

[10] *Id*.

[11] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

[12] *See* Clear Rate Response to Informal Complaint No. 7031052 (filed May 17, 2024) (*Clear Rate Response*); *see also* 47 CFR § 64.1160.

[13] *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)).

[14] 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.

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.[15] 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.[16] 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.[17]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[15] *See id.* § 64.1160(b).

[16] *See id.* § 64.1160(d).

[17] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint Nos. 7021753
	)	7211415
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 24, 2024 **Released: September 24, 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]

[1] *See* Informal Complaint Nos. 7021753 (filed May 9, 2024) & 7211415 (filed Aug. 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.

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.[6] Under the rules, upon a finding of material misrepresentation during the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.[7] The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.[8]

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon without his authorization.[9] In the complaint, Complainant stated that "I told them repeatedly I did not want to switch from Verizon. [They] kept saying they were part of Verizon."[10]

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.[11] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[12] 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."[13] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

[6] *Id*. § 64.1120(a)(1)(i)(A).

[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint Nos. 7021753 & 7211415.

[10] *Id*.

[11] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

[12] *See* Clear Rate Response to Informal Complaint Nos. 7021753 (filed May 17, 2024) & 7211415 (filed Aug. 23, 2024) (*Clear Rate Response*); *see also* 47 CFR § 64.1160.

[13] *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)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.[14]

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.[15] 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.[16] 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.[17]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[14] 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.

[15] *See id.* § 64.1160(b).

[16] *See id.* § 64.1160(d).

[17] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7221185
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 23, 2024 **Released: September 24, 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. 7221185 (Aug. 7, 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 "[Clear Rate] represented themselves as Verizon and said they would lower my charges. I kept saying I wanted to stay with Verizon and they assured me that they were Verizon. The rep even got a little nasty when I told him again and again that I wanted to stay with Verizon."[10] Complainant explained that "[Clear Rate] took my number and switched to Clear Rate which I never heard of until I received a bill that was for more money than my Verizon bill. . . . After getting the bill, I tried to call them [and] they hung up on me."[11]

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.[12] 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.[13] 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."[14] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7221185.

[10] *Id.*

[11] *Id.*

[12] 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.

[13] *See* Clear Rate Response to Informal Complaint No. 7221185 (Aug. 27, 2024).

[14] *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)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.[15]

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.[16] 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.[17] 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.[18]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[15] 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.

[16] *See id.* § 64.1160(b).

[17] *See id.* § 64.1160(d).

[18] *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7240776
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 23, 2024 **Released: September 24, 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. 7240776 (Aug. 16, 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 Nebraska Technology and Telecommunications (NT&T) to Clear Rate without their authorization.[9] Complainant stated that he "was telephoned by Clear Rate under the guise that 'this is your phone company calling.'"[10] He explained that "I thought and assume[d] the call was coming from . . . NT&T in Omaha, [that] was indeed my understanding…. I could not completely understand everything that was stated in the conversation… ."[11]

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.[12] 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.[13] 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."[14] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

[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. 7240776.

[10] *Id.*

[11] *Id.*

[12] 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.

[13] *See* Clear Rate Response to Informal Complaint No. 7240776 (Sep. 13, 2024).

[14] *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)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.[15]

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.[16] 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.[17] 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.[18]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[15] 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.

[16] *See id.* § 64.1160(b).

[17] *See id.* § 64.1160(d).

[18] *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7159769
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 23, 2024 **Released: September 24, 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. 7159769 (Jul. 16, 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 stated that Clear Rate "called our business and identified themselves as Verizon. They said that we were presently under a corporate account but could transfer to a small business account to save money. We have had Verizon for years and this is not unusual that they contact us to discuss our account."[10] Complainant explained that subsequently, "we were unable to access our account. We contacted Verizon and they identified that our business phone number was taken by Clear Rate. . . . We attempted numerous phone calls to [Clear Rate] without ever connecting with someone to speak to. Verizon advised us to file a police report and file this report to you. This company fraudulently stole our business phone number and upon checking Clear Rate Communications online, this is being done consistently to hundreds of people."[11]

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.[12] 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.[13] 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."[14] We therefore find

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7159769.

[10] *Id.*

[11] *Id.*

[12] 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.

[13] *See* Clear Rate Response to Informal Complaint No. 7159769 (Aug. 8, 2024).

[14] *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.[15]

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.[16] 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.[17] 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.[18]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[15] 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.

[16] *See id.* § 64.1160(b).

[17] *See id.* § 64.1160(d).

[18] *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7215869
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 23, 2024 **Released: September 24, 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. 7215869 (Aug. 5, 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 stated that "Clear Rate Communications contacted our business office and said that by using their services, we could save money on our phone bill [and they] claimed we could continue to work through Verizon. . . . I was getting the feeling that this was a scam [and] I transferred the call to my supervisor and he told the representative that our company was not interested in the service. . . . I immediately contacted them and told them to suspend our account as we had not provided final authorization for the service."[10] The Complainant explained that "[Clear Rate] contacted Verizon and closed our account which was also not authorized by us."[11]

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.[12] 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.[13] 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."[14] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

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[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 7215869.

[10] *Id.*

[11] *Id.*

[12] 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.

[13] *See* Clear Rate Response to Informal Complaint No. 7215869 (Aug. 8, 2024).

[14] *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)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.[15]

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.[16] 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.[17] 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.[18]

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

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[15] 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.

[16] *See id.* § 64.1160(b).

[17] *See id.* § 64.1160(d).

[18] *See id.* §§ 64.1140, 64.1160.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA No. 24-983
Released: September 24, 2024

BROADBAND DATA TASK FORCE ANNOUNCES WEBINAR ON THE MOBILE CHALLENGE PROCESS

WC Docket No. 19-195, WC Docket No. 11-10

The FCC's Broadband Data Task Force will host a virtual webinar on Thursday, October 24, 2024, starting at 3 p.m. E.T. to provide information about how to challenge the mobile coverage data that is reflected on the National Broadband Map. Challenges submitted by consumers and other stakeholders play an important role in the FCC's ongoing effort to provide accurate and precise information regarding mobile service availability across the country.

To participate in the webinar, interested parties should register to attend at https://fcc-gov.zoomgov.com/webinar/register/WN_apyXyNAPQBym95zQR4yOdQ. Questions about the mobile challenge process may be submitted in advance of the workshop to BDCWebinar@fcc.gov, or during the workshop using the Q&A function. The webinar will be recorded and made available on the FCC's website following the event.

As part of the FCC's Broadband Data Collection (BDC), consumers, state, local, and Tribal governments, internet service providers, and other stakeholders may submit mobile speed test data to challenge the mobile coverage information published on the National Broadband Map.[1] During this webinar, FCC staff will provide an overview of how to use the new FCC Mobile Speed Test app to challenge a provider's reported coverage,[2] how consumers and other stakeholders can review tests submitted using the app, how the bulk mobile challenge process works, and how to view mobile coverage data on the National Broadband Map.

Later this Fall, the FCC will also host several virtual office hours sessions for entities with questions about the mobile challenge process and submitting bulk mobile challenges. Dates, times and how to register for office hours sessions will be announced at a later date.

You can find information about mobile availability challenges on the BDC Help Center by visiting: https://help.bdc.fcc.gov/hc/en-us/sections/19845302880027-Submit-a-Mobile-Availability-Challenge and the Data Specifications for Mobile Speed Test Data by visiting: https://us-fcc.app.box.com/v/bdc-mobile-speedtest-spec.

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[1] 47 U.S.C. § 642(b)(5); *see generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1164-75 paras. 97-125 (adopting rules establishing the mobile challenge process and delegating authority to the Bureaus and Offices to implement technical details); *accord.* 47 CFR § 1.7006(e)-(f); *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007, 3010-44, paras. 8-59 (WTB/OEA/OET 2022) (implementing technical details for entities to file mobile speed test data and create mobile challenges).

[2] Press Release, FCC, FCC Launches New Mobile Speed Test App (July 23, 2024) https://www.fcc.gov/document/fcc-launches-new-mobile-speed-test-app.

Reasonable accommodations for people with disabilities are available upon request. Please include a description of the accommodation you will need and tell us how to contact you if we need more information. Please make your request as early as possible. Last minute requests will be accepted but it may not be possible to accommodate the request. Send an e-mail to: FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

For further information regarding this webinar, please contact Kimia Nikseresht at Kimia.Nikseresht@fcc.gov.

– FCC –

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 24-984
Released: September 24, 2024

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY NUMBERBARN, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 19-99[1]

Comments Due: October 9, 2024

NumberBarn, LLC (NumberBarn 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, NumberBarn indicates that it intends to initially request numbers in 50 states and the District of Columbia.[3]

In its Application, NumberBarn includes the contact information and acknowledgements required by section 52.15(g)(3)(ii) of the Commission's rules.[4] NumberBarn provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[5] NumberBarn

[1] We assign WC Docket No. 19-99 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); *see also Numbering Policies for Modern Communications et al*., WC Docket No. 13-97 et al., Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 23-75 (rel. Sept. 22, 2023) (Second Report and Order).

[2] *See* Application of for Authorization to Obtain Numbering Resources, WC Docket No. 19-99, (Apr. 10, 2019), https://www.fcc.gov/ecfs/filing/104100332210384 (Application); Supplement to NumberBarn Application, WC Docket No. 19-99 (filed Aug. 5, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10805139498500 (Supplement 1); Supplement to NumberBarn Application and Declaration of Matthew Veling, CEO of NumberBarn, LLC, WC Docket No. 19-99 (filed Jul. 11, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/10711733719281 (Supplement 2); Supplement to NumberBarn Application and Declaration of Matthew Veling, CEO of NumberBarn, LLC, WC Docket No. 19-99 (filed Aug. 14, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/10814956029230 (Supplement 3); *see also* 47 CFR § 52.15(g)(3).

[3] Supplement 1 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 1-4; Supplement 1 at 3; Supplement 2 at 1-10; Supplement 3 at 2; *see* 47 CFR § 52.15(g)(3)(ii)(A)-(N).

[5] Application at 2-3, Exh. A; Supplement 1 at 5; *see* 47 CFR § 52.15(g)(3)(ii)(H).

also certifies that it complies with contribution, regulatory fee, and 911 obligations.[6] In addition, NumberBarn certifies that it has the financial, managerial, and technical expertise to provide reliable service.[7] NumberBarn 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] NumberBarn 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]

NumberBarn also certifies that it will not use the numbers obtained pursuant to the authorization for illegal robocalling, illegal spoofing, or otherwise fraudulent purposes.[10] NumberBarn certifies that it has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements.[11] NumberBarn certifies that it complies with the Commission's Access Stimulation rules.[12] NumberBarn provides evidence it is compliant with FCC Form 499, FCC Form 477, and Broadband Data Collection filing requirements.[13] NumberBarn makes the necessary ownership disclosures and certifications as required under 47 CFR §§ 63.18(h) and (i).[14] Finally, NumberBarn makes a declaration under penalty of perjury that all statements in the application and any appendices are true and accurate.[15]

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.

[6] Application at 3; Supplement 2 at 2-4; *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.

[7] Application at 3; Supplement 2 at 5-6; *see* 47 CFR § 52.15(g)(3)(ii)(K).

[8] Application at 3, Exh. B; Supplement 2 at 5-6; *see* 47 CFR § 52.15(g)(3)(ii)(K).

[9] Application at 4; Supplement 2 at 6-7; *see* 47 CFR § 52.15(g)(3)(ii)(M); *see also* 21 U.S.C. § 862.

[10] Supplement 2 at 3; *see* 47 CFR § 52.15(g)(3)(ii)(C).

[11] Supplement 2 at 3; *see* 47 CFR § 52.15(g)(3)(ii)(D).

[12] Supplement 2 at 4; *see* 47 CFR § 52.15(g)(3)(ii)(F).

[13] Supplement 2 at 5; *see* 47 CFR § 52.15(g)(3)(ii)(I).

[14] Supplement 2 at 6, Exh. 1; *see* 47 CFR § 52.15(g)(3)(ii)(L). Applicants have not specified foreign ownership pursuant to the information, disclosures, and certifications required by 47 CFR § 63.18(h) and (i).

[15] Supplement 2 at 7, Exh. 2; Supplement 3 at 2; *see* 47 CFR § 52.15(g)(3)(ii)(N).

- 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:

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.[16] 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.

[16] 47 C.F.R. §§ 1.1200 *et seq.*

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.[17] 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.

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[17] *See* 47 CFR § 1.45(c).

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

In the Matter of	)	
	)	
Federated Wireless, Inc. Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules	)))	GN Docket No. 15-319

ORDER

Adopted: September 25, 2024 **Released: September 25, 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, Inc.'s (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 are being or may be impacted by Tropical Storm Helene, including DPAs East3, East19, East20, East21 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Tropical Storm Helene formed Tuesday, September 24, 2024, in the Northern Caribbean Sea and is expected to strengthen once it moves over the Gulf of Mexico.[3] Helene is also expected to make landfall along the coast of the Florida Panhandle and the Florida west coast by Thursday, September 26, 2024, as a major hurricane, bringing with it intense winds and rainfall.[4] For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

[1] *See* Federated Wireless, Inc. Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed September 24, 2024) (Waiver Request), https://www.fcc.gov/ecfs/document/109240893414918/1; *see also* State of Florida, Office of the Governor, *Governor DeSantis Declares State of Emergency* (Sep. 24, 2024), https://www.flgov.com/2024/09/24/memorandum-executive-order-number-24-209-emergency-management-amending-execuive-order-24-208-potential-tropical-cyclone-nine/.

[2] 47 CFR § 96.67(c)(2)-(3).

[3] *See* Waiver Request at 1; *see also* National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Tropical Storm Helene Advisory 5, 11:00 AM EDT Tue Sep 24, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?key_messages.

[4] *See* National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Tropical Storm Helene Advisory 5, 11:00 AM EDT Tue Sep 24, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?key_messages.

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 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 Helene. 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, IP telephone, and television service to millions of customers in areas that may be impacted by Helene.[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

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[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*).

[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.*

the availability of backhaul may be impacted as well.[14] Federated contends that these power outages may cause DPAs in the affected areas to be activated, impacting approximately 3,262 CBSDs, potentially disconnecting millions of customers—including consumer, residential and enterprise users, schools, and oil and gas companies.[15] 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, 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 previous severe weather events[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 October 9, 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 Helene, 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

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[14] *Id*.

[15] *Id.* at 2.

[16] *Id*.

[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); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-814 (rel. Aug. 14, 2024); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-915 (rel. Sep. 10, 2024); *Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-948 (rel. Sep. 13, 2024).

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, Inc. for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-986
Released: September 24, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THE EFFECTIVE DATE OF RULES ADOPTED PURSUANT TO THE REPORT AND ORDER ON FACILITATING IMPLEMENTATION OF NEXT GENERATION 911 SERVICES (NG911)

PS Docket Nos. 21-479 and 18-64

On July 19, 2024, the Federal Communications Commission (Commission) released a Report and Order (*Report and Order*) adopting rules to advance the nationwide Next Generation 911 (NG911) transition, define responsibilities, and set deadlines for originating service providers to implement NG911 capabilities on their networks and deliver 911 calls to NG911 systems established by 911 authorities.[1] The adopted rules become effective 60 days after publication in the Federal Register.[2]

On September 24, 2024, the Office of the Federal Register published a summary of the *Report and Order*.[3] Accordingly, the rules adopted in the *Report and Order* will take effect on **November 25, 2024**.[4] Paragraphs (a), (b), and (c) of section 9.31; and paragraphs (a) and (b) of section 9.34 of the rules may contain new or modified information collection requirements that may be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.[5] Compliance with the requirements in paragraphs (a), (b), and (c) of section 9.31; and paragraphs (a) and (b) of section 9.34 of the rules will not be required until after any review and approval by OMB that the Public Safety and Homeland Security Bureau (Bureau) deems necessary.[6] The Commission will publish a document in the Federal Register announcing that compliance date.[7]

For further information, please contact Timothy Hoseth, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-0197 or timothy.hoseth@fcc.gov.

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[1] *Facilitating Implementation of Next Generation 911 Services (NG911); Location-Based Routing for Wireless 911 Calls,* PS Docket Nos. 21-479 and 18-64, Report and Order, FCC 24-78 (rel. July 19, 2024), Erratum (rel. Sept. 5, 2024) (*Report and Order*).

[2] *See Report and Order* at 104, para. 225.

[3] 89 Fed. Reg. 78066 (Sept. 24, 2024).

[4] *See* 89 Fed. Reg. 78066.

[5] *See* 47 CFR §§ 9.31(a) through (c), 9.34(a) and (b); *see also Report and Order* at 104, para. 225; 89 Fed. Reg. 78127.

[6] *See* 47 CFR §§ 9.31(d), 9.34(c); *Report and Order* at 104, para. 225; 89 Fed. Reg. 78127.

[7] *See Report and Order* at 104, para. 225 (delegating authority to the Bureau to publish a document in the *Federal Register* announcing that compliance date and revising paragraph (d) of section 9.31 and paragraph (c) of section 9.34); 89 Fed. Reg. 78127.

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 24-988
Released: September 27, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES POSTING OF 2024 TARIFF REVIEW PLAN FOR EXOGENOUS COST FILINGS BY RATE-OF-RETURN CARRIERS THAT ELECTED INCENTIVE REGULATION FOR BUSINESS DATA SERVICES

WC Docket Nos. 24-41, 17-144

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the release of the 2024 tariff review plan (TRP) workbooks for rate-of-return local exchange carriers that elected incentive regulation for their business data services (BDS) offerings pursuant to the *Rate-of-Return BDS Order* and *Enhanced A-CAM Order* to calculate exogenous cost adjustments to their tariffed BDS rates.[1] This year, the Bureau established November 1, 2024 as the effective date for tariff filings implementing these exogenous cost adjustments.[2] The TRP workbooks are posted on the Commission's website at: https://www.fcc.gov/2024-2025-trp-midcourse-exogenous-cost-filings.

In the *2024 Tariff Review Plan Order*, the Bureau required rate-of-return carriers that elected BDS incentive regulation to file TRP workbooks reflecting any exogenous cost adjustment for Telecommunications Relay Service (TRS), North American Numbering Plan Administration (NANPA), and regulatory fees in rates to be effective October 1, 2024.[3] On September 9, 2024, the Bureau extended the effective date for the exogenous cost tariff filing from October 1 to November 1, 2024.[4] The exogenous cost adjustment for TRS must be "grossed up" to spread the entire adjustment over the remaining eight months in the tariff year. The exogenous cost adjustment for regulatory fees and NANPA fees must be "grossed up" to spread the entire adjustments over the remaining 11 months between November 1, 2024 and September 30, 2025.[5] The TRP workbooks adjust BDS rates using

[1] *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Report and Order, Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403 (2018) (*Rate-of-Return Business Data Services Order*); *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 38 FCC Rcd 7040, 38 FCC Rcd 7040, 7078, para. 91 (2023) (*Enhanced A-CAM Order*); *see* 47 CFR § 61.50; *see also Wireline Competition Bureau Announces Additional 120 Rate-of-Return Carrier Study Areas Electing Incentive Regulation for their Business Data Services*, WC Docket No. 17-144, Public Notice, DA 24-667 (WCB Jul. 11, 2024).

[2] *July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-877, at 1, para. 1 (WCB/PPD Sept. 9, 2024) (*Extension Order*).

[3] *See July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-434, at 15, para. 46 (WCB/PPD May 10, 2024) (*2024 Tariff Review Plan Order*).

[4] *Extension Order* at 3, para. 6.

[5] *Id*.

factors for the TRS contribution fees,[6] NANPA contribution fee,[7] and the regulatory fee for interstate telecommunications service providers.[8] For exogenous cost tariff filings to be effective November 1, 2024, tariff filings made on 15 days' notice are due on October 17, 2024 and tariff filings made on 7 days' notice are due on October 25, 2024.[9]

The TRP workbooks posted on the Commission's website were prepared by the National Exchange Carrier Association (NECA) for carriers for which NECA files BDS rates and is designed to ensure that carriers make exogenous cost and rate adjustments in accordance with the Commission's rules.[10] Carriers that do not participate in the NECA tariff should also file a TRP workbook.[11] Commission staff reviewed the TRPs released today and carriers are encouraged to use them. Carriers are free, however, to create and submit their own TRP workbooks, as long as those TRP workbooks comply with the Commission's rules. Carriers should submit their TRP workbooks, data, and formulas in an Excel format rather than PDF format.[12]

Consistent with the *2024 Tariff Review Plan Order*, the November 1, 2024 exogenous cost filing and rate adjustment is optional if the total amount of such adjustments would either increase rates or meet a *de minimis* threshold equal to the $1,040 standard tariff filing fee applied on the same basis as the tariff filing for which the filing fee is paid.[13] Per the *Extension Order*, carriers may treat the exogenous cost tariff filing as a tariff transmittal amending their federal universal service (FUSF) contribution factor tariff filing effective October 1, 2024.[14] In their transmittal letter, carriers should refer to the original tariff transmittal number in order to avoid an additional tariff filing fee. If a carrier did not submit the October 1, 2024 FUSF contribution factor tariff filing and submits the November 1, 2024 exogenous cost tariff filing, it must submit the standard tariff filing fee through the Commission's Registration System (CORES).[15]

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[6] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, et al*., CG Docket Nos. 03-123, 10-51, Order, DA 24-620, at 1-2, para. 3 (CGB June 28, 2024) (approving a carrier contribution factor of 0.00024 for TRS support provided through state programs, and a carrier contribution factor of 0.01952 for Internet-based TRS support—IP captioned telephone service (or CTS), IP relay, and video relay service (or VRS)).

[7] *See Wireline Competition Bureau Announces the Proposed North American Numbering Plan Administration Fund Size Estimate and Contribution Factor for October 2024 Through September 2025*, CC Docket No. 92-237, Public Notice, DA 24-869 (WCB Aug. 28, 2024) (approving the proposed NANPA contribution factor of 0.0000896 if the Commission takes no action within 14 days following August 28, 2024).

[8] *Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024 et al*., MD Docket No. 24-86 et al., Second Report and Order, FCC 24-93, at 57, Appx. C (Sept. 6, 2024) (adopting a fiscal year 2024 regulatory fee (per revenue dollar) for interstate telecommunications service providers of 0.005420).

[9] *Extension Order* at 3, para. 6.

[10] *See* 47 CFR § 61.50(c).

[11] *See 2024 Tariff Review Plan Order* at 15, para. 46. Electing carriers must complete and file one of two Excel workbooks. The "TY 2024-2025 Individual Study Area BDS Midcourse TRP" workbook is for carriers that establish a Price Cap Index (PCI), Actual Price Index (API), Service Band Indices (SBIs), and upper SBI limits separately for each study area. The "TY 2024-2025 Holding Company BDS Midcourse TRP" workbook is for carriers that establish a PCI, API, SBIs and upper SBI limits at the holding company level.

[12] *See 2024 Tariff Review Plan Order* at 16, para. 48.

[13] *Id.* at 15, para. 46; 47 CFR § 1.1105.

[14] *Extension Order* at 3, para. 6.

[15] *Id.*; *see* 47 CFR § 1.1105; FCC, Commission Registration System for the FCC, https://www.fcc.gov/licensing-databases/commission-registration-system-fcc (last visited Sept. 27, 2024).

For further information, please contact Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, (202) 418-8209, Christopher.Koves@fcc.gov; or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, (202) 418-1383, Richard.Kwiatkowski@fcc.gov.

- FCC -

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

In the Matter of	)	
	)	
Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules	)))	GN Docket No. 15-319

ORDER

Adopted: September 26, 2024 **Released: September 26, 2024**

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau), Mobility Division, conditionally grants Google LLC's (Google or Petitioner)[1] request for a precautionary, limited, and conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service.[2] Google 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 Helene, including DPAs East 3, East 17, East 18, East 19, East 20, East 21, Pensacola, and Pascagoula (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Hurricane Helene is expected to make landfall along the west coast of the Florida Peninsula and Florida Big Bend on Thursday, September 26, 2024, as a major Category 4 hurricane, bringing with it potentially catastrophic hurricane-force winds and storm surge.[3] For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

[1] *See* Google LLC Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed September 25, 2024) (Waiver Request), https://www.fcc.gov/ecfs/document/10924161334169/1; *see also* State of Florida, Office of the Governor, Governor DeSantis Declares State of Emergency (Sep. 24, 2024), https://www.flgov.com/2024/09/24/memorandum-executive-order-number-24-209-emergency-management-amending-execuive-order-24-208-potential-tropical-cyclone-nine/; The White House, President Joseph R. Biden, Jr. Approves Florida Emergency Declaration (Sep. 24, 2024), https://www.whitehouse.gov/briefing-room/presidential-actions/2024/09/24/president-joseph-r-biden-jr-approves-florida-emergency-declaration-8/.

[2] 47 CFR § 96.67(c)(2)-(3).

[3] *See* Waiver Request at 1; *see also* National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Helene Advisory 12, 4:00 AM CDT Thu Sep 26, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?key_messages.

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 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. Google 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 Google to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Helene. Google seeks a waiver of these requirements in the interest of providing uninterrupted service to hundreds or thousands of Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, IP telephone, and television service to thousands of customers in areas that may be impacted by Helene.[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. Google asserts that while all ESC sensors in the projected path of Helene are currently performing nominally, and all DPAs in the area are fully monitored, its experience from previous storms "indicates that Google's ESC network may lose coverage of one or more DPAs due to extended commercial power outages and/or physical damage to the

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[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.*

[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 2.

[9] 47 CFR § 1.925(b)(3).

[10] 47 CFR § 1.3.

sensor equipment."[11] Google contends that these power outages may cause DPAs in the affected areas to be activated, impacting hundreds or thousands of CBSDs, potentially disconnecting thousands of customers, "and some of the services being supported over the affected CBSDs include broadband, IP telephone, and television service to homes and businesses."[12] According to Google, "[m]any customers, including those who have electric service or electricity through the use of generators, rely on these services to receive updates about ongoing dangers and essential services."[13] 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 previous severe weather events[14] to allow the Google 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 Google SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either October 10, 2024, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Google 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 Helene, 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

[11] Waiver Request at 1.

[12] *Id.* at 2.

[13] *Id*.

[14] *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); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-814 (rel. Aug. 14, 2024); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-915 (rel. Sep. 10, 2024); *Google LLC Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-948 (rel. Sep. 13, 2024); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 24-985 (rel. Sep. 25, 2024).

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 Google LLC for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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 24-990
Released: September 25, 2024

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

WC Docket No(s). 24-216

Comments Due: October 10, 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 **October 26, 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

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **October 10, 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.

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[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): Level 3 Telecom of Louisiana, LLC**
WC Docket No. 24-216, Comp. Pol. File No. 1929
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-216%22))
Affected Service(s) – Basic Business Line Service; Complete Lines/Trunks Service (a/k/a Complete Lines DS0); and Digital PBX Trunk Service
Service Area(s) – Metairie and New Orleans, Louisiana
Authorized Date(s) – on or after October 26, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-991
Released: September 25, 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 HURRICANE HELENE IN FLORIDA, GEORGIA, NORTH CAROLINA AND SOUTH CAROLINA

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 Hurricane Helene. 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: **Hurricane Helene**. Communications providers are advised that for providers that participate in DIRS, PSHSB hereby waives the separate Network Outage Reporting System (NORS) obligations for the duration of the DIRS activation with respect to outages in the geographic areas where DIRS has been activated. Providers that participate in DIRS remain required, where applicable, to report incidents in NORS that have reportable effects that fall outside the DIRS activation areas. **Reports are requested at 9:00 a.m. (EDT) on Thursday, September 26, 2024 and every day after that by 9:00 a.m. (EDT) until DIRS is deactivated.**

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

JURISDICTIONS OF INTEREST FOR THIS DIRS ACTIVATION INCLUDE THE FOLLOWING:

Florida: Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

Georgia: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

South Carolina: Abbeville, Anderson, Cherokee, Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg, Union, and York.

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:

Florida: Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

Georgia: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin,

[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 to an activation of the Disaster Information Reporting System. 47 CFR § 4.17(a)(2).

Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

South Carolina: Abbeville, Anderson, Cherokee, Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg, Union, and York.

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 Hurricane Helene 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 Hurricane Helene, please go to https://www.fcc.gov/helene.

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

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[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).

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, 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-24-992
Released: September 25, 2024

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

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 Hurricane Helene. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.[1] Specifically, requests must include the following certification: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862." Presentations that directly relate to the emergency posed by Hurricane Helene are exempt from the restrictions of the Commission's *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.[2]

- **Media Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Helene and filed pursuant to section 73.1635 of the Commission's rules[3] may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & 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 Hurricane Helene request and the date the initial request was granted.
  - **Office of International Affairs Contact During Business Hours:**
    - **Submarine Cables and International 214s**:
        - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
        - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
        - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
    - **International High Frequency Broadcast Station**:
        - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
        - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
  - **Office of International Affairs Contact During Non-Business Hours:**
        - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Helene 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**:
      - Kathyrn Medley, 202-418-1211, Kathyrn.Medley@fcc.gov
      - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
      - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
  - **Space Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Competition Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Hurricane Helene 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 Hurricane Helene 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-24-993
Released: September 25, 2024

THE FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO HURRICANE HELENE

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

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

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 Hurricane Helene.

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
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News Media Information 202-418-0500
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THE FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS IMPACTED BY HURRICANE HELENE

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

Hurricane Helene may cause widespread damage and significant impacts to communications services and infrastructure. Hurricanes and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove 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 D.C. 20554

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

DA No. 24-997

Report No. TEL-02394 **Thursday September 26, 2024**

International Authorizations Granted

Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

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.

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-ASG-20240921-00142 E **Rural Cellular Corporation**
Assignment
Grant of Authority **Date of Action:** 09/25/2024

Current Licensee: California RSA No. 4 Limited Partnership
FROM: California RSA No. 4 Limited Partnership
TO: Rural Cellular Corporation

On September 21, 2024, Rural Cellular Corporation (RCC) filed a notification of the pro forma assignment of the international section 214 authorization (ITC-214-19940224-00104) held by California RSA No 4 Limited Partnership (CA RSA 4) to RCC, effective September 10, 2024. Prior to the transaction, RCC held a controlling 16.67% general partnership and 33.3% limited partnership interest in CA RSA 4. RCC then acquired the remaining interests, and CA RSA 4 became a direct wholly owned subsidiary of RCC. CA RSA 4 was then immediately dissolved and its assets distributed to RCC, including the international section 214 authorization. RCC, a Minnesota corporation, is an indirect wholly owned subsidiary of Verizon Communications, Inc. (Verizon), a Delaware corporation.

ITC-T/C-20230518-00064 E Micronesian Telecomm. Corp

Transfer of Control

Grant of Authority Date of Action: 09/25/2024

Current Licensee: Micronesian Telecomm. Corp

FROM: Prospector Pacific Investments Inc.

TO: Citadel Pacific Telecom Holdings, LLC

On May 18, 2023, Micronesian Telecommunications Corporation (MTC), a Commonwealth of the Northern Marianas Islands (CNMI) corporation that holds an international section 214 authorization for global facilities-based and resale service (ITC-214-19970502-00247), filed a notification of the pro forma transfer of control of MTC from Prospector Pacific Investments Inc. (PPII) to Citadel Pacific Telecom Holdings, LLC (CPTH), effective May 1, 2023. The Applicants filed a supplement on June 7, 2023.

MTC is a wholly owned subsidiary of Pacific Telecom Inc. (PTI), a CNMI corporation. Prior to the transaction, PPII held an 85% and controlling interest in PTI, and SK Telecom Co., Ltd (SK), a South Korea entity, held the remaining 15% interest. PPII was wholly owned by Citadel Pacific Ltd (CPL), a Cayman Islands entity.

In a corporate reorganization, PPII was removed from the ownership chain, and CPTH, a Guam entity, was inserted. PTI is now a wholly owned subsidiary of CPTH. CPL holds an 85% and controlling interest in CPTH, and SK Telecom Co., Ltd (SK), a South Korea entity, holds the remaining 15% interest. MTC was and remains an indirectly controlled subsidiary of CPL.

ITC-T/C-20230518-00065 E PTI Pacifica Inc.

Transfer of Control

Grant of Authority Date of Action: 09/25/2024

Current Licensee: PTI Pacifica Inc.

FROM: Prospector Pacific Investments Inc.

TO: Citadel Pacific Telecom Holdings, LLC

On May 18, 2023, PTI Pacifica Inc. (PTI Pacifica), a Commonwealth of the Northern Marianas Islands (CNMI) corporation that holds an international section 214 authorization for global facilities-based and resale service (ITC-214-19970326-00172), filed a notification of the pro forma transfer of control of PTI Pacifica from Prospector Pacific Investments Inc. (PPII) to Citadel Pacific Telecom Holdings, LLC (CPTH), effective May 1, 2023. The Applicants filed a supplement on June 7, 2023.

PTI Pacifica is a wholly owned subsidiary of Micronesian Telecommunications Corporation (MTC), which is a wholly owned subsidiary of Pacific Telecom Inc. (PTI), both CNMI corporations. Prior to the transaction, PPII held an 85% and controlling interest in PTI, and SK Telecom Co., Ltd (SK), a South Korea entity, held the remaining 15% interest. PPII was a wholly owned by Citadel Pacific Ltd (CPL), a Cayman Islands entity.

In a corporate reorganization, PPII was removed from the ownership chain, and CPTH, a Guam entity, was inserted. PTI is now a wholly owned subsidiary of CPTH. CPL holds an 85% and controlling interest in CPTH, and SK Telecom Co., Ltd (SK), a South Korea entity, holds the remaining 15% interest. PTI Pacifica was and remains an indirectly controlled subsidiary of CPL.

ITC-T/C-20240722-00119 E Mediacom Wireless LLC

Transfer of Control

Grant of Authority Date of Action: 09/23/2024

Current Licensee: Mediacom Wireless LLC

FROM: Mediacom Communications Corporation

TO: Mediacom Holdings LLC

On July 22, 2024, Mediacom Wireless LLC (Mediacom Wireless), a Delaware corporation that holds an international section 214 authorization for global resale service (ITC-214-20240411-00062), filed a notification of the pro forma transfer of control of Mediacom Wireless from Mediacom Communications Corporation (MCC) to Mediacom Holdings LLC (MHC), effective April 12, 2024. Prior to the transaction, Mediacom Wireless was a direct wholly owned subsidiary of MCC, a Delaware corporation. In a corporate reorganization, MHC, a Delaware limited liability company, was inserted into the ownership chain as a wholly owned subsidiary of MCC. As a result, Mediacom Wireless is now a direct wholly owned subsidiary of MHC and an indirect wholly owned subsidiary of MCC.

ITC-T/C-20240921-00141 E California RSA No. 4 Limited Partnership

Transfer of Control

Grant of Authority Date of Action: 09/25/2024

Current Licensee: California RSA No. 4 Limited Partnership

FROM: Pinnacles Cellular, Inc.

TO: Rural Cellular Corporation

On September 21, 2024, California RSA No. 4 Limited Partnership (CA RSA 4), a California limited partnership that holds an international section 214 authorization (ITC-214-19940224-00104), [text/verb missing] from Pinnacles Cellular, Inc. (Pinnacles) to Rural Cellular Corporation (RCC), effective July 31, 2024. Prior to the transaction Pinnacles held a 16.67% general partnership and 33.3% limited partnership interest in CA RSA 4.

Pinnacles and RCC are both indirect wholly owned subsidiaries of Verizon Communications, Inc. (Verizon), a Delaware corporation. In a corporate reorganization, Pinnacles was merged into RCC, and as a result RCC now holds a 16.67% general partnership and 33.3% limited partnership interest in CA RSA 4.

INFORMATIVE

ITC-214-20240607-00101 Schurz Communications, Inc.

By letter filed September 11, 2024, the Applicant notified the Commission that the following wholly owned subsidiaries may provide international telecommunications service under the international section 214 authorization held by Schurz Communications, Inc., pursuant to section 63.21(h) of the Commission's rules, 47 CFR 63.21(h): Antietam Cable Television, LLC DBA Antietam Broadband; Orbitel Communications, L.L.C.; Long Lines, LLC; Hiawatha Broadband Communications, Inc.; Champlain Broadband, LLC DBA Burlington Telecom; and The New Knoxville Telephone Company.

SURRENDER

ITC-214-19940224-00104 Rural Cellular Corporation

On September 10, 2024, Verizon Communications, Inc., on behalf of its wholly owned subsidiary Rural Cellular Communications Corporation (RCC), notified the Commission of the surrender of ITC-214-19940224-00104. RCC will continue to provide international service pursuant to international section 214 authorization ITC-214-19980401-00220.

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. 47 CFR § 63.11. 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. 47 CFR § 63.10.

(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, 47 CFR § 63.10, 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 CFR § 61.19. Except as specified in section 20.15 with respect to commercial mobile radio service providers, 47 CFR § 20.15, carriers regulated as non-dominant, as defined in section 61.3, 47 CFR § 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. 47 CFR §§ 42.10, 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). The route list must be filed through the International Communications Filing System (ICFS). https://www.fcc.gov/icfs

(8) Any U.S. Carrier that owned, leased oh holds an indefeasible right of use (IRU) for 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. 47 CFR § 63.19.

(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. 47 CFR §§ 64.1902, 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, 47 CFR § 63.10, 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 63.09. 47 CFR § 63.09.

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

(14) Carriers shall make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law, including but not limited to:
(A) The Wiretap Act, 18 U.S.C. 2510 et seq.;
(B) The Stored Communications Act, 18 U.S.C. 2701 et seq.;
(C) The Pen Register and Trap and Trace Statute, 18 U.S.C. 3121 et seq.; and
(D) Other court orders, subpoenas or other legal process;

(15) Every carrier must designate an agent for service in the District of Columbia. see 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 63.18(q), 64.1195.

(16) Every carrier must designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process. 47 CFR § 63.18(q).

(17) Each carrier shall notify the Commission of any change in its contact information within thirty (30) days. 47 CFR § 63.18(q). 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 or at FCC-OIA-TAD@fcc.gov.

PUBLIC NOTICE

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

News media information 202-418-0500
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TTY (202) 418-2555

DA No. 24-998

Report No. SCL-00488 **Thursday September 26, 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.

SCL-T/C-20230518-00015 E PTI Pacifica Inc.

Transfer of Control

Grant of Authority Date of Action: 09/25/2024

Current Licensee: PTI Pacifica Inc.

FROM: Prospector Pacific Investments Inc.

TO: Citadel Pacific Telecom Holdings, LLC

On May 18, 2023, PTI Pacifica Inc. (PTI Pacifica), a Commonwealth of the Northern Marianas Islands (CNMI) corporation that is the licensee for the MTC Interisland Cable System (MICS) (SCL-LIC-202111013-00048), filed a notification of the pro forma transfer of control of PTI Pacifica from Prospector Pacific Investments Inc. (PPII) to Citadel Pacific Telecom Holdings, LLC (CPTH), effective May 1, 2023. MICS is a non-common carrier fiber-optic submarine cable system that connects Saipan, Tinian, and Rota with each other and to Guam.

PTI Pacifica is a wholly owned subsidiary of Micronesian Telecommunications Corporation, which is a wholly owned subsidiary of Pacific Telecom Inc. (PTI), both CNMI corporations. Prior to the transaction, PPII held an 85% and controlling interest in PTI, and SK Telecom Co., Ltd (SK), a South Korea entity, held the remaining 15% interest. PPII was a wholly owned by Citadel Pacific Ltd (CPL), a Cayman Islands entity.

In a corporate reorganization, PPII was removed from the ownership chain, and CPTH, a Guam entity, was inserted. PTI is now a wholly owned subsidiary of CPTH. CPL holds an 85% and controlling interest in CPTH, and SK Telecom Co., Ltd (SK), a South Korea entity, holds the remaining 15% interest. PTI Pacifica was and remains an indirectly controlled subsidiary of CPL.

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

In the Matter of	)	
	)	
Genesis Communications, Inc.	)	NAL/Account No. MB-202441410018
WREN-LP, Charlottesville, Virginia	)	FRN: 0023016124
Application for Renewal of License	)	Facility ID No. 194996
	)	Application File No. 72618

MEMORANDUM OPINION AND ORDER

Adopted: September 30, 2024 **Released: September 30, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Application) filed by Genesis Communications, Inc. (Licensee) to renew the license of low power FM (LPFM) station, WREN-LP, Charlottesville, Virginia (Station).[1] Also before us are a Petition to Deny (Petition) the Application filed by Tidewater Communications, LLC (Petitioner),[2] an Informal Objection (Objection) filed by Petitioner,[3] related

[1] Application File No. 72618.

[2] Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 80853 (filed Sept. 3, 2019) (Petition). Petitioner filed the Petition not only in relation to the Application but also in relation to applications to renew the licenses of four additional LPFM stations: WXRK-LP, WVAI-LP, and WPVC-LP, Charlottesville, Virginia, and WKMZ-LP, Ruckersville, Virginia. The licenses of WPVC-LP and WKMZ-LP were subsequently cancelled. *See* Letter from Lee J. Peltzman, Counsel for Promise Land Commc'ns, to James Bradshaw, Deputy Chief, Audio Div., Media Bureau (dated June 17, 2020) ("turning in" WPVC-LP license for cancellation and "requesting dismissal of any pending Application"); *Broadcast Actions*, Public Notice, Report No. 49778, at 2 (MB July 13, 2020) (cancelling WPVC-LP license); *Broadcast Actions*, Public Notice, Report No. 49971, at 1 (MB April 20, 2021) (cancelling WKMZ-LP license). WXRK-LP and WVAI-LP remain operational. We will address Petitioner's allegations with respect to those stations in separate decisions.

[3] Consolidated Informal Objection of Tidewater Commc'ns, LLC, Pleading File No. 124876 (filed Oct. 19, 2020) (Objection). Petitioner filed the Objection in relation to the Application and the applications to renew the licenses of WXRK-LP, and WVAI-LP. As noted, we will address Petitioner's allegations regarding WXRK-LP and WVAI-LP in separate decisions.

responsive pleadings,[4] and Licensee's response to our Letter of Inquiry (LOI).[5] For the reasons discussed below, we grant in part and otherwise deny the Petition, grant the Objection, and adopt the attached Consent Decree, which resolves issues related to the broadcast of commercial advertising on the Station in violation of section 399B of the Communications Act of 1934, as amended (Act), and sections 73.503(d) and 73.801 of the Commission's rules (Underwriting Laws).[6] We also grant the Application for a short renewal term of two years upon Licensee fully and timely satisfying its obligation to pay the civil penalty in the manner set forth in paragraph 16 of the attached Consent Decree.

II. BACKGROUND

2. In the Petition, Petitioner alleges that (1) the Station is "regularly broadcasting commercial announcements" in violation of the Underwriting Laws,[7] (2) Licensee is a party "to a prohibited operating agreement or management agreement" in violation of section 73.860(e) of the Commission's rules (Rules),[8] (3) the Station is not conforming to the educational purpose Licensee outlined in its application for the Station's initial construction permit (Permit Application),[9] and (4) Licensee made false certifications in the Permit Application.[10] In its Opposition, Licensee disputes all of Petitioner's allegations, except the assertion that Licensee made false certifications in the Application, which Licensee does not discuss.[11] Licensee also alleges that Petitioner is abusing the Commission's processes and has lacked candor in the Petition.[12] In its Reply, Petitioner denies abusing the

[4] Licensee filed an Opposition to the Petition on October 25, 2019. Opposition to Consolidated Petition to Deny of Genesis Commc'ns, Inc., Pleading File No. 87324 (filed Oct. 25, 2019) (First Opposition). Petitioner filed a Reply to the Opposition on November 14, 2019. Consolidated Reply to Oppositions to Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 89557 (filed Nov. 14, 2019); Consolidated Reply to Oppositions to Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 90116 (filed Nov. 15, 2019) (resubmitting pleading filed on November 14, 2019, along with missing declaration) (collectively, Reply). *See also* Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media et al. (dated Oct. 21, 2019) (extending deadline for oppositions to the Petition until October 25, 2019, and extending deadline for reply to any oppositions until November 14, 2019). The Reply addressed not just the Opposition but oppositions to the Petition filed by Blue Ridge Free Media, licensee of WXRK-LP, and Air Mix Virginia, licensee of WVAI-LP. As noted above, we will address Petitioner's allegations about WXRK-LP and WVAI-LP in separate decisions. Licensee filed an Opposition to the Objection on November 2, 2020. Opposition to Consolidated Informal Objection of Genesis Commc'ns, Inc., Pleading File No. 125273 (filed Nov. 2, 2020) (Second Opposition)

[5] Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated Feb. 27, 2020) (LOI Response). *See also* Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media, et al. (dated Jan. 28, 2020) (LOI). Licensee later supplemented its response on July 31, 2020. *See* Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated July 31, 2020) (Addendum).

[6] 47 U.S.C. § 399B; 47 CFR §§ 73.503(d), 73.801.

[7] Petition at 8-9, 14-15.

[8] *Id.* at 3-8.

[9] *Id.* at 13-14, 20. *See also* Application File No. BNPL-20131113BUP (Permit Application).

[10] Petition at 17-21. Petitioner also makes a general allegation that Licensee made false certifications in the Application, and its application for the Station's license (License Application). Petition at 2, 12, 15. *See also* Application File No. BLL-20160309AAA. However, all of the specific certifications referenced by Petitioner were made in the Permit Application. Accordingly, we do not discuss certifications made in the Application or the License Application further herein.

[11] First Opposition at 3-11.

[12] *Id.* at 2, 6.

Commission's processes,[13] and reiterates the claims it made in the Petition.[14] Given the incomplete state of the record, we sent the LOI to Licensee, requesting additional information about the allegations made in the Petition. Licensee submitted its response on February 27, 2020.[15] Subsequently, Petitioner submitted the Objection, which alleges that the Station continues to violate the Underwriting Laws.[16] Licensee opposed the Objection, asserting that the underwriting announcements referenced in the Objection was "in material compliance with FCC policy."[17]

III. DISCUSSION

A. Standard of Review

3. Under section 309(k) of the Act, the Commission shall grant a station's renewal application 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.[18] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[19]

4. If a petition to deny or informal objection has been filed against a renewal application, the Commission reviews the pleading pursuant to Section 309(d) to determine whether it contains "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with . . . subsection (k) of this section . . . ."[20] If so, the Commission examines the record to determine whether a "substantial and material question of fact is presented to warrant further inquiry in a hearing."[21] If the Commission determines that the record as a whole presents a substantial and material question of fact, or if it is unable to determine that the licensee has met the statutory renewal standard, it will designate the application for hearing.[22] If it finds that the record does not present any substantial and material questions of fact and that the licensee has met the statutory standard, the Commission will grant the application.[23] As an alternative to finding that renewal should be denied where the licensee has failed to meet the statutory standard, the Commission may grant the application subject to conditions, including renewal for less than the maximum term.[24]

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[13] Reply at 3.

[14] *Id.* at 3-11.

[15] Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated Feb. 27, 2020).

[16] Objection at 2, 4-5.

[17] Second Opposition at 2-4.

[18] 47 U.S.C. § 309(k)(1).

[19] *Id.* § 309(k)(2), (3).

[20] *Id.* § 309(d)(1); *Astroline Commc'ns Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (*Astroline*). At this stage of the inquiry, the Commission determines whether the alleged facts, if true, "would alter the Commission's public interest calculus." *Gencom Inc. v. FCC*, 832 F.2d 171, 180-81 (D.C. Cir. 1987) (*Gencom*).

[21] *Astroline*, 857 F.2d at 1561. The Commission's focus and discretion are wider at this stage. *Gencom*, 832 F.2d at 181 (stating that, in the second step, the Commission "must consider not only petitioner's evidence, but it must weigh that evidence against the facts offered in rebuttal . . .").

[22] 47 U.S.C. § 309(k)(2), (3). *See also* 47 U.S.C. § 309(d)(2), (e).

[23] *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(k)(1).

[24] 47 U.S.C. § 309(k)(2).

B. Abuse of Process

5. We reject Licensee's assertion that Petitioner is abusing the Commission's process because it is using this proceeding to try to "maintain market dominance in Charlottesville."[25] "Abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule."[26] As the party alleging abuse of process, Licensee needed to make a clear showing that an abuse was actually perpetrated.[27] Licensee, though, has offered no specific evidence to support its abuse of process allegation. Further, while Licensee does allege that Petitioner had an economic motive for filing the Petition,[28] the mere existence of an ulterior economic motive in the filing of pleadings before the Commission is not sufficient to establish abuse of process without the presence of exacerbating factors.[29] Moreover, the Petition does touch upon compliance with the Underwriting Laws and other Commission rules, and thus addresses legitimate public interest concerns. Accordingly, we cannot find that Licensee raised a substantial and material question of fact regarding whether Petitioner abused Commission processes by filing the Petition.

C. Operating Agreement

6. Petitioner has brought to our attention the agreement between Licensee and other LPFM licensees, which formed the Virginia Radio Coop (Coop),[30] the agreements regarding the sale of underwriting announcements that Licensee and other LPFM licensees that are also Coop members had with Experience Media, LLC (Experience Media), and the arrangements regarding the sale of underwriting announcements that Licensee and other LPFM licensees that are also Coop members have with Experience Media Sales LLC (Experience Sales).[31] These agreements are highly unusual in the context of the LPFM service. For this reason, we have reviewed them carefully to ensure that they do not create common ownership or control of the Station and any other broadcast station, which would violate

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[25] First Opposition at 2.

[26] *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, BC Docket No. 81-742, First Report and Order, 4 FCC Rcd 4780, 4780, para. 2, n.3 (1989). In dealing with allegations of abuse of process by the filing of petitions to deny, we focus on whether the petition was filed for the primary and substantial purpose of delay. *HATCO-60*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1521 (1986) (*HATCO-60*), *citing Radio Carrollton*, Memorandum Opinion and Order, 69 FCC 2d 1139, 1150-51 (1978) (*Radio Carrollton*), modified, 72 FCC 2d 264 (1979), *aff'd sub nom., Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

[27] *HATCO-60*, 60 Rad. Reg. 2d at 1521, para. 22*, citing Ralph C. Wilson Indus., Inc*., 91 FCC 2d 139, 143 (1982). *See also WWOR TV, Inc*., Decision 7 FCC Rcd 636, 638, para. 24 (1992) (noting that abuse of process is "not an easy matter prove"); *Evansville Skywave, Inc*., Memorandum Opinion and Order, 7 FCC Rcd 1699, 1702 n.10 (1992) (stating that a finding of abuse of process must be based on "more than a generalized concern" and that a conclusion that an entity abused the Commission's process requires a "specific finding, supported by the record, of abusive intent.").

[28] First Opposition at 2.

[29] *See Radio Carrollton*, 69 FCC 2d at 1151, n.25, *citing Gill Indus*., Memorandum Opinion and Order, 56 FCC 2d 765, 769, para. 10 (1975).

[30] The legal name of this entity is the Virginia Radio Coalition LLC but the entity does business as Virginia Radio Coop.

[31] It appears that Experience Sales replaced Experience Media but that both entities assisted Licensee with the sale of underwriting announcements. *See* Opposition to Consolidated Petition to Deny of Blue Ridge Free Media, Inc., Pleading File No. 82435, at 11, n.24 (filed Sept. 27, 2019) (BRFM Opposition).

the LPFM ownership restrictions set forth in sections 73.855 and 73.860 of the Rules.[32] We note that we will scrutinize any agreement of a similar nature that involves an LPFM applicant or licensees to ensure that it does not contravene those restrictions.

7. In this case, Petitioner alleges[33] that the agreements noted in the preceding paragraph violate section 73.860(e) of the Rules. That section prohibits an LPFM licensee from "enter[ing] into an operating agreement of any type, including a time brokerage or management agreement, *with either a full power broadcast station or another LPFM station*."[34] None of the Coop, Experience Media, or Experience Sales hold any Commission authorizations. Further, as detailed below, Petitioner has not raised a substantial and material question of fact regarding whether (1) the Coop holds an attributable interest in Licensee, any of its other LPFM licensee members, or any other individual or entity that holds FCC broadcast authorizations,[35] or (2) Experience Media held, or Experience Sales holds, an attributable interest in Licensee or any other individual or entity that holds FCC broadcast authorizations.[36] Accordingly, while we believe that Petitioner raised valid concerns about Licensee's relationship with the Coop and its members, Experience Media and Experience Sales, we find that there is no substantial and material question of fact as to whether the prohibition set forth in section 73.860(e) bars Licensee's membership in the Coop, Licensee's agreement with Experience Media, or Licensee's arrangement with Experience Sales.[37]

8. *Coop*. We acknowledge that the Coop operating agreement is highly unusual and that Petitioner has identified issues that we will bear in mind should we be called upon to examine a similar agreement in the future. However, the Coop operating agreement itself does not contain any provisions that allow the Coop to control the programming, personnel, or finances of any Station operated by its

[32] *See* 47 CFR §§ 73.855(a) (generally prohibiting grant of an LPFM authorization "to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations"); 73.860(a) (generally prohibiting grant of an LPFM license "to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions"), 73.860(e) (prohibiting an LPFM licensee from "enter[ing] into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station").

[33] Petition at 3-8; Reply at 3-11.

[34] 47 CFR § 73.860(e) (emphasis added). Petitioner focuses on the fact that the agreement forming the Coop is entitled "Operating Agreement." Reply at 4. Licensee disputes that any agreement referred to as an "operating agreement" is subject to the prohibition. First Opposition at 3-4 (suggesting that, if the agreement forming the Coop "does not rise to create a time brokerage or management operating relationship," it is not an "operating agreement" prohibited by section 73.860(e)). Given our finding that the prohibition does not apply here because the Coop itself is not an FCC licensee and does not hold an attributable interest in any full power broadcast or LPFM station, we do not address this issue herein.

[35] We acknowledge that Licensee, like all of the Coop members, holds an interest in the Coop because the Coop is a limited liability company and the Coop's organizational document does not contain any provisions insulating any member from any of the Coop's activities. *See* LOI Response at Attachs. However, because we do not find that the Coop itself holds an attributable interest in any entity that holds broadcast authorizations, the fact that Licensee holds a cognizable interest in the Coop has no impact on Licensee's compliance with the multiple ownership, cross-ownership and operating agreement prohibitions set forth in sections 73.855(a) and 73.860 of the Rules. 47 CFR §§ 73.855(a); 73.860(a), 73.860(e).

[36] *See* 47 CFR § 73.858 (providing that, with a few exceptions not applicable here, "[o]wnership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555").

[37] Because we find that the agreements at issue do not involve an LPFM licensee and another full power FM or LPFM licensee, we need not reach Petitioner's and Licensee's arguments about whether the agreements are the types of agreements prohibited by section 73.860(e). Petition at 3-6; First Opposition at 3-4; Reply at 4-5, 7, 8-10, 12-13, 21.

members that are Commission licensees. The agreement specifically states: "Nothing in this Operating Agreement shall supersede or violate any FCC, IRS, or federal, state, or local statute, rule or regulation pertaining to the separate and distinct business and operational integrity of its members."[38] Licensee also has confirmed that "[t]he Coop's role is limited to shared real property, facilities and other limited related expenses,"[39] and "[e]ach member remains independent from a programming and management perspective."[40] Further, nothing in the record suggests that the day-to-day operation of the Coop involves the Coop exercising control over Licensee's programming, personnel or finances. In fact, Licensee has explicitly stated that is not the case.[41] The record supports Licensee's claim, and includes evidence that Licensee maintains its own bank account,[42] pays its apportioned share of any costs incurred by the Coop on behalf of it and the other Coop members,[43] purchased all equipment used solely for its own operations,[44] pays its own personnel costs,[45] and pays all of its own programming costs.[46]

9. We acknowledge that, as Petitioner points out, Licensee and the other Coop members formed the Coop in order to share "a transmitter site, antenna, studio and office facilities.[47] We agree with Petitioner that this sort of arrangement is unconventional and warrants greater scrutiny to ensure that it does not result in violations of the restrictions on LPFM ownership. However, after reviewing the record, we conclude that the Coop operating agreement is akin to a shared services agreement. As such, on its own, it does not give the Coop an attributable interest in Licensee or its other members,[48] and thus does not alter our conclusion that Petitioner has not raised a substantial and material question of fact as to whether section 73.860(e) bars the agreement by which Licensee and other LPFM licensees formed the Coop.

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[38] LOI Response at Attach.

[39] *See* First Opposition at 3.

[40] First Opposition at 4. *See also* LOI Response at Sworn Statement of Jon Hall (stating that only individuals authorized by Licensee have "programming control over" the Station).

[41] First Opposition at 3-4 ("None of the members of the Coop have any type of control or influence over the on-air broadcast programming of the other members. None of the members of the Coop exercise managerial influence over the other members."); LOI Response at Sworn Statement of Jon Hall (stating "[t]here is no programming control over WREN-LP save for WREN-LP authorized, internal staff members" and "[o]ur programming is fully independent"). We note that other LPFM licensee members of the Coop have affirmed Licensee's statements. *See* BRFM Opposition at 5 ("there is no common control"); Opposition to Consolidated Petition to Deny of Air Mix Virginia, Pleading File No. 87383, at Decl. of Joseph Middleton (filed Oct. 25, 2019) ("Neither the Coop nor any of the other members of the Coop has any involvement in the management or execution of WVAI-LP's programming, finances or personnel.").

[42] LOI Response at Sworn Statement of Sharon Hall ("The WREN checking account was opened in late December 2016."), and Attach. (WREN Checking Account Activity Since December 2016).

[43] *Id.* at Sworn Statement of Sharon Hall ("Each station reimburses [the Coop] ¼ of the shared expenses.") and Virginia Rado Co-op Check Register (containing entries for various expenses with notes stating "divide by 4 stations").

[44] *Id.* at Sworn Statement of Jon Hall ("Each station owns their studio equipment, transmitter, audio processors, and Wide-orbit software, etc.").

[45] *Id.* (noting that if "people are paid, they are paid by the station that uses their services").

[46] *Id.* (explaining that each individual member of the Coop is responsible for its own music licensing costs).

[47] Petition at 5; Reply at i.

[48] *2014 Quadrennial Regulatory – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, 07-294 and 04-256, Second Report and Order, 65 Comm. Reg. (P & F) 553, 559, para. 368 (2016) (declining to adopt even a disclosure requirement for shared services agreements involving radio stations, and explaining that radio shared services arrangements did not appear to present "potential public interest concerns").

10. Finally, to the extent that Petitioner alleges that Licensee and other Coop members collaborated and consulted with each other about their LPFM applications,[49] we note that the Commission believes that "allowing and encouraging applicants to collaborate" can help ensure increased service to the public.[50] Petitioner has failed to explain how the pre-filing activities of the Licensee and the other Coop members demonstrate that the Coop agreement is an operating agreement prohibited by section 73.860(e).

11. *Experience Media.* We agree with Petitioner that Licensee's agreement with Experience Media was unusual and that close scrutiny of the relationship between Experience Media and Licensee is warranted, especially since other Coop members had similar agreements with Experience Media,. Additionally, we acknowledge that—as Petitioner points out—some of the marketing materials distributed by Experience Media use language suggesting that the Station was under "common ownership" or "common management" with the LPFM stations of other Coop members.[51] However, Licensee's agreement with Experience Media specified that Experience Media was "acting as an independent contractor and not as an employee" and explicitly stated that it did "not create a partnership or joint venture" between the parties and is "exclusively a contract for service."[52] Moreover, the marketing materials specified different rates for underwriting announcements at each station, and did not indicate that the purchase of underwriting announcements on one station was tied to the purchase of announcements on any other station or that a discount was being offered for the purchase of underwriting announcements on more than one of the stations.[53] Given the information provided by Licensee and discussed above, we find that there is no substantial and material question of fact regarding whether, based on the agreement between Licensee and Experience Media, that entity holds an attributable interest in Licensee. We note, though, that we remain concerned about these types of arrangements and will subject any similar agreements to careful scrutiny going forward.

12. *Experience Sales.* Like Licensee's agreement with Experience Media, Licensee's arrangement with Experience Sales is unconventional. Given that other Coop members have similar arrangements with Experience Sales, careful review of Licensee's arrangement with Experience Sales is warranted. In discussing its arrangement with Experience Sales, Licensee has explained that it "maintains the right to accept or reject any underwriting referrals from [Experience Sales]."[54] Further, while Petitioner asserts that Licensee's arrangement with Experience Sales is problematic because the owner of that entity is also an on-air personality at the Station,[55] being an employee at a station does not give someone an attributable interest in that station.[56] Given the information before us, we find that Petitioner has not raised a substantial and material question of fact regarding whether Experience Sales holds an attributable interest in Licensee or any other entity holding FCC authorizations. We remain troubled by this type of arrangement, and will continue to subject any similar agreements to careful review. We

[49] Reply at 6.

[50] *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educ. Broad. Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12534, para. 37 (2019). Specifically, "[b]y allowing organizations interested in filing an LPFM application the leeway to communicate with other eligible organizations, they can maximize their chances of acquiring LPFM construction permits and explore potential time-share construction and operating efficiencies." *Id.*

[51] Petition at 4, 6, and Attach. 1.

[52] LOI Response at Attach. (Consulting Agreement).

[53] *See also* Petition at Attach. 1.

[54] First Opposition at 8.

[55] Petition at 5-6.

[56] *See The Helpline*, Letter Order, 23 FCC Rcd 12665, 12670 (MB 2008), *citing State of Oregon Acting by and through the State Board of Higher Educ. for the Benefit of S. Oregon Univ.*, Letter Order, 22 FCC Rcd 17663, 17665 (MB 2007) ("A mere employment relationship is not cognizable under the NCE attribution standards.").

caution Licensee to ensure that any marketing materials created by itself, Experience Sales or any other entity do not imply or state that the Station is commonly owned, managed or marketed with any other broadcast station.

D. Educational Programming

13. We find Petitioner did not raise a substantial and material question of fact regarding whether the Station's programming qualifies as educational. Besides Petitioner's allegations regarding the Station's underwriting announcements (which we address separately below) and its general assertion that the Station broadcasts "a 'Real Oldies' music format,"[57] Petitioner does not offer any specific evidence to support its arguments that the Station is not being used for an educational purpose.[58]

14. We also note that Petitioner misses the mark with its argument that the Station is not providing the type of educational programming that Licensee specified in the Permit Application.[59] The Commission has long recognized that licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming,[60] and has found that this is particularly true with regard to the programming decisions of noncommercial educational stations, such as LPFM stations.[61] Nothing in the Act, or the Rules bars Licensee—or any other LPFM station—from modifying its program offerings so long as those offerings continue to advance the educational objectives of its licensee.

E. Misrepresentations[62]

15. We find Petitioner has failed to either make a prima facie case or raise a substantial and material question of fact regarding whether Licensee made false statements and/or false certifications in the Permit Application.[63] For instance, Petitioner suggests that Licensee may have falsely certified that it

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[57] Petition at 14.

[58] To the extent that Petitioner focuses on the fact that the Station primarily broadcasts music, we note that it is not necessary that a station's programming be exclusively, or even primarily, educational in nature in order for the station to qualify as an educational station. *See Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642, at n. 30 (MB July 31, 2023), *citing Lower Cape Commc'ns, Inc*., Memorandum Opinion and Order, FCC 80-453, 47 Rad. Reg. 2d 1577, 1579 (1980). Further, on at least one occasion, the Commission has found that use of an NCE station to create and disseminate "specially formatted classical music programming" advances an educational program. *Univ. of San Francisco & Classical Pub. Radio Network, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10534-35, para. 8 and n.34 (2015).

[59] Petition at 13-15.

[60] *See, e.g., License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (MB 1993).

[61] *Pittsburg State Univ*., Letter Order, 22 FCC Rcd 12983, 12985 (MB 2007). The Commission has made clear that it defers to a licensee's editorial judgment as to what constitutes "educational" programming, unless that judgment is arbitrary or unreasonable. *Enid Public Radio Ass'n*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 9138, 9141, n.23 (MB 2010); *WQED Pittsburgh and Cornerstone Television, Inc*., Order on Reconsideration, 15 FCC Rcd 2534, 2535, para. 3 (2000). The Commission historically "has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming." *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees,* Notice of Proposed Rule Making, 87 FCC 2d 716, 732, para. 36 (1981).

[62] A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc*., Order, 93 FCC 2d 127, 129, para. 6 (1983); *San Francisco Unified Sch. Dist*., Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted).

[63] Petition at 17-19. Grant of the Permit Application is final. However, Licensee's character is relevant to our consideration of the Application. Accordingly, we herein consider Petitioner's allegations that Licensee made misrepresentations and false certifications in those applications. *See, e.g*., *Lighthouse Christian Ctr.*, Memorandum

and all parties to the Permit Application complied with the Commission's policies regarding investor insulation and the non-participation of non-party investors or creditors.[64] However, Petitioner offers no evidence to support this claim.[65]

16. In addition, as noted above, Petitioner has not raised a substantial and material question of fact regarding Licensee's compliance with the operating agreement prohibition set forth in section 73.860(e) of the Rules. Nor has Petitioner offered any evidence suggesting Licensee violated the cross-ownership prohibition set forth in section 73.860(a) of the Rules. Accordingly, there is no evidence in the record raising a substantial and material question of fact regarding whether Licensee falsely certified that it and all parties to the Permit Application complied with the LPFM cross-ownership limits.[66]

17. Further, although we conclude below that the spouse of one of Licensee's board members holds an attributable interest in Licensee, and this means Licensee incorrectly certified in the Permit Application that it and all parties to the Permit Application complied with the Commission's policies relating to media interests of immediate family members and with the multiple ownership limits set forth in section 73.855 of the Rules,[67] we conclude that Licensee did not make these incorrect certifications with an intent to deceive.[68] We base this conclusion on the fact that Licensee sought the advice of communications counsel regarding this certification and was advised that it did comply with the policies,[69] and the fact that the worksheet (Worksheet #1a—Family Relationships) that was part of the Permit Application form also suggested that Licensee complied with the policies.[70]

Opinion and Order, 32 FCC Rcd 6244, 6249, para. 15 and n. 45 (MB 2017); *Lazer Licenses, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 6357, 6359, para. 5 (MB2015); *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Commc'ns Co. to Sinclair Television Grp., Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156 (MB 2014); *Apple 107.1, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722 (MB 2013) (all considering character-related allegations made in relation to other applications in evaluating the applications under consideration).

[64] Petition at 18. *See also* Permit Application, Section II–Legal, Item 5—Ownership.

[65] Petitioner did offer a vague allegation that "the Coop charade is in violation of the Commission's policies relation to investor insulation and non-participation of non-party investors or creditors" but offered no details. Petition at 18.

[66] *See also* Permit Application, Section II–Legal, Item 5—Ownership.

[67] *See also* Permit Application, Section II–Legal, Item 5—Ownership.

[68] Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

[69] LOI Response at Sworn Statement of Jon Hall ("I did run down a checklist …to verify that the distance between the stations and signal overlap issues allowed us to both apply for these frequencies legally. I also verified that at the tine with our lawyer ….").

[70] When the Permit Application was filed, the instructions to FCC Form 318 (Low Power FM Station Construction Permit Application) told applicants to use the Worksheet re Family Relationships to determine how to regarding the media interests of immediate family members. The worksheet first asked whether any member of the immediate family (i.e., husband, wife, father, mother, sister, brother, son and/or daughter) of any party to the application had any interest in or connection with any other broadcast station, pending broadcast application, or daily newspaper in the same area. It indicated that two LPFM stations were considered to be in the same area if their transmitting antennas were located within seven miles of one another. Based on the coordinates provided in the Permit Application and the Gateway application for WKMZ-LP's construction permit, minor modification of construction permit and license to cover, Application File Nos. BNPL- 20131114ACU, BMPL-20170130AAA, BLL-20170209ABP, the transmitting antennas of the two stations were more than 12 miles apart. *See also* LOI Response at Sworn Statement of Jon Hall ("I did verify a checklist … to verify that mileage separations and other parameters did work for Sharon and myself to be on the two independent boards.").

18. Finally, we find that Petitioner has failed to make a prima facie case that Licensee made a misrepresentation in the Permit Application when it pledged to air at least eight hours of locally originated programming per day.[71] Petitioner suggests that Licensee made this pledge in order to obtain a comparative advantage in the event the Permit Application was mutually exclusive with any other applications for LPFM station construction permits, and implies Licensee never intended to honor the pledge.[72] However, Petitioner offers no evidence to support its allegations. Indeed, it is hard to envision how Petitioner could offer such evidence since the Permit Application was granted as a singleton Licensee therefore was not required to honor its pledge to air locally originated programming.

F. Underwriting Announcements

19. As noted above, we have negotiated—and herein adopt—a Consent Decree with Licensee. Therein, Licensee acknowledges that it has violated the Underwriting Laws, agrees to make a civil penalty payment to the United States Treasury in the amount of one thousand dollars ($1,000) and agrees to adopt a compliance plan to prevent further violations of the Underwriting Laws. After reviewing the terms of the Consent Decree, we find the public interest would be served by its approval and by terminating the Bureau's investigation of Licensee's violations of the Underwriting Laws, subject to the terms of the Consent Decree. We note that, given the findings made herein, we grant the Petition in part and grant the Objection.

G. Multiple Ownership Limit

20. We find that Licensee was involved in a violation of section 73.855(a) of the Rules.[73] Specifically, we have determined that Jonathan Hall (Hall) held attributable interests in Licensee and the Station, and Gateway Media, Inc. (Gateway) and WKMZ-LP, Ruckersville, Virginia, in violation of section 73.855(a) of the Rules. Hall was one of Gateway's officers, and was and is married to one of Licensee's directors. While Licensee claims that Hall does not have any control over the Station's programming, personnel or finances,[74] the record indicates otherwise.[75] Hall participated in

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[71] Permit Application, Section III—Point System Factors, Item 2—Local program origination.

[72] Petition at 19.

[73] 47 CFR § 73.855(a) (generally prohibiting any party from holding an attributable interest in two or more LPFM stations). We note that Petitioner alleged only that Licensee was a party to violations of section 73.860 of the Rules, 47 CFR § 73.860, which prohibits cross-ownership of an LPFM station and any other non-LPFM broadcast station, and also prohibits operating agreements between an LPFM licensee and either a full power broadcast station or another LPFM station. Petition at 18 ("The issue is whether there is a violation of section 73.860 of the Rules resulting from the relationship of Sharon P. Hall, who is listed as an officer of [Licensee], licensee of WREN-LP, and Jonathan G. Hall, who is listed as an officer of Gateway Media, Inc., licensee of WKMZ-LP."); Reply at 11 (asserting "the common operation of WREN-LP and WKMZ-LP violated Section 73.860(e) of the Rules, both as a result of the simulcast as well as the direct involvement of Jon Hall in operation of WREN-LP" and referencing the "spousal attribution policy"). However, because Petitioner provided no evidence of any agreement between Licensee and Gateway Media, Inc., and because Petitioner's allegations related to two LPFM licensees, we instead considered whether a violation of section 73.855(a) had occurred.

[74] First Opposition at 10. Licensee also states that it (1) was advised by communications counsel that it was in compliance with the Commission's policies regarding media interests of immediate family members, and (2) relied upon the worksheet (Worksheet #1a—Family Relationships) that was part of the Permit Application form, which also suggested that Licensee complied with the policies. LOI Response at Sworn Statement of Jon Hall. While both of these claims are relevant to our determination, *supra* at para. 17, that Licensee did not possess an intent to deceive the Commission regarding its compliance with the Commission's policies regarding the media interests of immediate family members, they did not exempt Licensee or Hall from the obligation to comply with the prohibition on multiple ownership of LPFM stations.

[75] We acknowledge that, as Licensee states, the Commission no longer presumptively attributes the media interests of one spouse to the other solely on the basis of marital status. First Opposition at 8-9, citing *Clarification of Commission Policies Regarding Spousal Attribution,* Policy Statement, 7 FCC Rcd 1920, 1920, para. 1 (1992).

programming, and personnel decisions related to the Station.[76] Hall had prior broadcast experience, while his wife is an accountant.[77]. Hall was involved in the Licensee's application process.[78] Finally, Genesis and Gateway shared personnel, and programming.[79] Because both the Station and WKMZ-LP were subject to Hall's influence and control, their media interests will be attributed to one another. We note that Hall no longer holds an attributable interest in WKMZ-LP, which ceased operation on October 11, 2019,[80] and later had its license cancelled.[81] For these reasons, we are not taking separate enforcement action in relation to this violation.

H. Renewal Application

21. After reviewing the record before us, we believe that grant of a short-term license renewal is appropriate in order to ensure Licensee's ongoing compliance with the Act and the Rules.[82] Accordingly, upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in Paragraph 16 of the attached Consent Decree, we will grant the Application for a short-term renewal of two years (24 months).

22. Finally, we have reviewed the Application in accordance with section 309(k) of the Act[83] and find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing in the record creates a substantial or material question of fact calling

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Instead, the Commission decides spousal attribution issues based on certain factors traditionally considered relevant: (1) Representations that the media interests of close family members will be independent and will not be subject to common influence or control; (2) Commingling of ownership or other interests in media businesses; (3) Participation by family members in the financial affairs, programming and personnel decisions of each other's media interests; (4) Prior broadcast experience of the individual seeking to establish independent interests; (5) Financial independence; (6) Sharing of personnel, equipment, contractors or information regarding programming; and (7) Involvement by family members in the acquisition or application process. *See id.* at 1922-23, paras. 16, 21.

[76] First Opposition at Decl. of Sharon Hall (noting that Hall was "on the air" during the Station's early operations, and stating that Hall is the Station's engineer, General Manager, Program Director, and "the one who handles most of the 'back end' work such as editing programs and nearly everything else"); LOI Response at Sworn Statement of Jon Hall (referring to the Station's programming as "our programming" stating "we are a volunteer operation" in reference to Licensee, and indicating he had "never in any way been in involvement with any other stations programming in any way beyond [the Station]"); Addendum at 1 (consisting of sworn statement by Hall, which discusses various underwriting announcements and at various points characterizes Licensee's actions and decisions as things that "we" did).

[77] *See* LOI Response at Sworn Statement of Jon Hall (explaining that Hall was a Vice President at another Charlottesville area station, and that Hall has performed broadcast engineering work) and Jon Hall Emails (including email from Sharon Hall in which she states she works at an "accounting firm"). *See also* Linkedin Profile, Sharon Hall, https://www.linkedin.com/in/sharon-hall-2b0b0a3b (last visited Aug. 28, 2024) (explaining that Sharon Hall is "an accounting/bookkeeping manager at a public accounting firm" and also a board member for the Station).

[78] LOI Response at Sworn Statement of Jon Hall ("I decided that filing for a station in Charlottesville would be highly cost effective given the economy of scale and the much larger potential audience. Sharon, would apply for the Charlottesville channel.").

[79] LOI Response at Sworn Statement of Jon Hall (stating that Gateway "originally intended to operate as a separate entity from [the Station]," acknowledging that WKMZ-LP "was simply a repeater of [the Station's] programming," and noting that WKMZ-LP "was simply an 'extension' of [the Station]" for purposes of the agreement by which the Coop was formed). Notably, neither of the statements made by Sharon Hall under penalty of perjury discussed the Station's programming, or the process of applying for the Station's construction permit. Only the statements made by Jon Hall address them.

[80] LOI Response at Sworn Statement of Jon Hall.

[81] *See supra* note 2.

[82] 47 U.S.C. §§ 317, 399B; 47 CFR §§ 73.503(d), 73.801.

[83] 47 U.S.C. § 309(k)(1).

for further inquiry regarding the Application. After reviewing the record and the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree, terminating the Bureau's investigation of the issues raised in the Petition and Objections, and granting the Application for a short renewal term of two years.

IV. CONCLUSION/ACTIONS

23. **IT IS ORDERED** that, pursuant to Section 4(i), 4(j) and 309(k) of the Communications Act of 1934, as amended,[84] and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,[85] the Consent Decree attached hereto **IS ADOPTED** and its terms incorporated by reference.

24. **IT IS FURTHER ORDERED** that the Petition to Deny (Pleading File No. 80853) filed by Tidewater Communications, LLC, on September 3, 2019, **IS GRANTED TO THE EXTENT INDICATED HEREIN**, and the Informal Objection (Pleading File No. 124876) filed by Tidewater Communications, LLC, on October 19, 2020, **IS GRANTED.**

25. **IT IS FURTHER ORDERED** that the application of Genesis Communications, Inc., for renewal of license for noncommercial educational low power FM station WREN-LP, Facility ID No. 194996 (Application File No. 72618) **IS GRANTED**, as conditioned herein.

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

27. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order and Consent Decree shall be sent via email to Sharon Hall, Genesis Communications, Inc., and Cary S. Tepper, Counsel, Genesis Communications, Inc..

28. **IT IS FURTHER ORDERED** that, pursuant to 47 CFR § 73.878, a copy of this Memorandum Opinion and Order and Consent Decree, and as otherwise required all related investigatory materials, **SHALL BE RETAINED** in the station records for WREN-LP, until grant of the next license renewal application for that station.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[84] 47 U.S.C. §§ 154(i), 154(j), 309(k).

[85] 47 CFR §§ 0.61, 0.283.

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

In the Matter of	)	
	)	
Genesis Communications, Inc.	)	NAL/Account No. MB-202441410018
WREN-LP, Charlottesville, Virginia	)	FRN: 0023016124
Application for Renewal of License	)	Facility ID No. 194996
	)	Application File No. 72618

CONSENT DECREE

I. INTRODUCTION

1. The Media Bureau of the Federal Communications Commission and Genesis Communications, Inc. (hereinafter Licensee, as defined below), licensee of low power FM station WREN-LP, Charlottesville, Virginia (hereinafter Station, as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation concerning Licensee's compliance with sections 399B of the Act and 73.503(d) and 73.801 of the Commission's rules.[1] Pursuant to the Consent Decree, Licensee agrees, among other things, to a short-term, two-year license renewal for the Station, to implement a comprehensive plan to ensure its future compliance with its underwriting obligations, and to pay a Civil Penalty to the United States Treasury in the total amount of one thousand dollars ($1,000).

II. DEFINITIONS

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

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

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

(c) "Application" means the pending application for renewal of license for low power FM station WREN-LP, Charlottesville, Virginia, Facility ID No. 194996 (Application File No. 72618).

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

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

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

(g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Licensee is subject by virtue of being a Commission licensee, including, but not limited to, section 399B of the Act, 47 U.S.C. § 399B, and sections 73.503(d), and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801;

(h) "Compliance Plan" means the processes and procedures developed by Licensee in an effort to ensure compliance with section 399B of the Act, 47 U.S.C. §

[1] *See* 47 U.S.C. §399B; 47 CFR §§ 73.503(d), 73.801 (Underwriting Laws).

399B, and sections 73.503(d) and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801;

(i) "Covered Employees" means all employees, volunteers, and agents of Licensee who are responsible for performing, supervising, overseeing, or managing activities related to Licensee's responsibilities under the Act and the Rules, including the Underwriting Laws;

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

(k) "Investigation" means the Bureau's investigation of information contained in the Application and related pleadings, as detailed herein;

(l) "License" refers to the license authorization for low power FM station WREN-LP, Charlottesville, Virginia (Facility ID No.194996);

(m) "Licensee" means Genesis Communications, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(n) "Parties" means Licensee and the Bureau;

(o) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;

(p) "Station" means low power FM station WREN-LP, Charlottesville, Virginia (Facility ID No. 194996);

(q) "Underwriting Laws" means section 399B of the Act, 47 U.S.C. § 399B, and sections 73.503(d) and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801, and the decisions and orders of the Commission interpreting these provisions; and

(r) "Violations" means the violations of section 399B of the Communications Act, as amended, 47 U.S.C. § 399B, and sections 73.503(d), and 73.801 of the Commission's rules, 47 CFR §§ 73.503(d), 73.801.

III. BACKGROUND

A. Legal Background

3. *Underwriting Laws*. Noncommercial educational broadcasters, including low power FM stations, are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and noncommercial educational broadcasters cannot air commercial advertising.[2] The Underwriting Laws help "protect the public's use and enjoyment of commercial-free broadcasts" and "provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising."[3] Noncommercial educational broadcasters are licensed to provide noncommercial, locally-oriented programming for their communities, and the Commission acts when necessary to enforce the laws prohibiting noncommercial educational stations from airing announcements that promote for-profit advertisers.

4. The Underwriting Laws define an advertisement as, among other things, programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or

[2] 47 U.S.C. § 399B(b)(2).

[3] *Syner Foundation*, *Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

product" of for-profit entities.[4] Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.[5] Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors' products, services, or businesses.[6] Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.[7]

B. Factual Background

5. The Commission received a Petition to Deny and later an Informal Objection filed against the above-captioned Application alleging that Licensee violated the Underwriting Laws by broadcasting advertisements, which impermissibly promoted their for-profit underwriters' products or services and contained comparative and qualitative descriptions, pricing information, calls to action, and inducements to buy the products or services.[8] Both the Petition to Deny and the Informal Objection included full written transcripts of the alleged advertisements.[9]

6. Based on the foregoing, the Bureau's Audio Division issued a letter of inquiry to gather additional information concerning the allegations and suspended processing of the Application.[10] The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

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

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

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

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[4] 47 U.S.C. § 399B(a).

[5] 47 U.S.C. § 399B(b)(2).

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

[7] *Id*.

[8] *See* Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 80850 (filed Sept. 3, 2019) (Petition); Consolidated Informal Objection of Tidewater Commc'ns, LLC, Pleading File No. 124783 (filed Oct. 19, 2020) (Objection).

[9] *See* Petition, Attach. 5; Objection, Attach.

[10] *See* Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media, et al. (dated Jan. 28, 2020).

10. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein. 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 Licensee concerning the matters that were the subject of the Investigation, or to set for hearing the question of Licensee's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[11] Licensee acknowledges and agrees that nothing herein prevents the Bureau or Commission from instituting any new proceedings against Licensee during the term of this Consent Decree concerning any matters that were not the subject of the Investigation.[12]

11. **Admission of Liability**. Licensee stipulates that it violated section 399B of the Act and sections 73.503(d), and 73.801 of the Rules.

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

13. **Compliance Plan**. Licensee agrees that, within 60 calendar days after the Effective Date, the Compliance Officer shall, on behalf of Licensee, develop, implement, and administer a Compliance Plan designed to ensure Licensee's future compliance with the Communications Laws, the Underwriting Laws, and the terms and conditions of this Consent Decree. The Compliance Plan shall contain, at a minimum, the following components:

(a) **Consultation with Counsel**. If the Compliance Officer is not an FCC regulatory counsel or in-house counsel, Licensee shall consult with outside FCC regulatory counsel regarding Licensee's overall compliance with the Underwriting Laws. Such consultations shall occur on an annual basis, if not more frequently.

(b) **Operating Procedures**. The Compliance Plan shall contain Operating Procedures that all Covered Employees must follow to ensure Licensee's compliance with the Underwriting Laws. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee complies with the Underwriting Laws.

(c) **Compliance Manual**. The Compliance Plan shall include a Compliance Manual that the Compliance Officer has distributed to all Covered Employees within 60 calendar days after the Effective Date. The Compliance Manual shall explain fully and completely the Underwriting Laws and include the Operating Procedures that Covered Employees shall follow. The Compliance Officer shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The

[11] *See* 47 CFR § 1.93(b).

[12] We caution Licensee that it may jeopardize its license if ongoing violations of the Underwriting Laws persist.

Compliance Officer shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(d) **Compliance Training Program**. The Compliance Plan shall contain a comprehensive Compliance Training Program for all Covered Employees regarding compliance with the Underwriting Laws. As part of the Compliance Training Program, the Compliance Officer shall advise all Covered Employees of Licensee's obligation to report any noncompliance with the Underwriting Laws under Paragraph 13(e) of this Consent Decree and shall instruct Covered Employees on how to disclose noncompliance to the Compliance Officer and Licensee. The Compliance Officer shall train all Covered Employees pursuant to the Compliance Training Program within 75 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 30 calendar days after the date such person becomes a Covered Employee. The Compliance Officer 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.

(e) **Reporting Noncompliance**. Licensee agrees that it shall report any noncompliance with the Underwriting Laws, and with the terms and conditions of this Consent Decree within 15 calendar days after discovery of such noncompliance at any station of which Licensee is or becomes the licensee. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; and Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov.

14. **Compliance Reports**. Licensee agrees that it shall submit Compliance Reports to the Commission 90 calendar days after the Effective Date and thereafter annually on the anniversary of the Effective Date up to and including the Termination Date, as that term is defined below.[13]

(a) Each Compliance Report shall include a detailed description of Licensee's efforts during the preceding period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, stating that the Compliance Officer has personal knowledge that Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 13(e) 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

[13] A Compliance Report must be filed on the Termination Date in the event that the Termination Date does not fall on the anniversary of the Effective Date.

the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[14]

(c) If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted via email to: Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; and Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov.

15. **Termination Date**. The obligations to which Licensee is subject pursuant to this Consent Decree shall terminate twenty-four (24) months after grant of the Application, *provided* the Bureau is satisfied that Licensee has demonstrated substantial compliance with its obligations under the terms of the Consent Decree. If the Bureau is not satisfied that Licensee has demonstrated substantial compliance with the terms of the Consent Decree, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for an additional period of time as the Bureau deems appropriate.

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

17. **Payment.** Licensee shall send electronic notification of payment to Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov, on the date said payment is made. Below are payment instructions that Licensee shall follow based on the form of payment it has selected:[15]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[16] or printed Commission Registration System (CORES) form[17] must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 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

[14] 47 CFR § 1.16.

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

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

[17] 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.

number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[18] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using 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.

18. **Event of Default**. Licensee agrees that an Event of Default shall occur upon: (a) the failure by Licensee to pay the full amount of the Civil Penalty to the U.S. Treasury on or before the due date specified in paragraph 16 of this Consent Decree; or (b) the release of an order within thirty-six (36) months of the Effective Date by the Commission or Bureau, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Licensee or any other entity owned, operated, or controlled by, or under common control with Licensee violated the Commission's Underwriting Laws and/or the terms of this Consent Decree.

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

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

20. **Waivers**. Licensee agrees that, as of the Effective Date, it waives any and all rights it may otherwise 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 Parties agree that Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. The Parties further agree that 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 Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[19] relating to the matters addressed in this Consent Decree.

21. **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.

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

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

24. **Successors and Assigns**. Licensee acknowledges and agrees that this Consent Decree and all of the obligations, terms and conditions herein shall be binding on its successors, assigns, and transferees, and on the successors, assigns, and transferees of all broadcast stations of which it is and becomes the licensee.

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

26. **Modifications**. The Parties agree that this Consent Decree may not be modified without the advance written consent of both Parties.

27. **Paragraph Headings**. The Parties agree that 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.

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

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

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____September 30, 2024_____

GENESIS COMMUNICATIONS, INC.

By: _____
Sharon Hall
President

Date: _____

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____

GENESIS COMMUNICATIONS, INC.

By: Sharon Hall / President
Sharon Hall
President

Date: 9/30/24

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 24-1001
Released: September 26, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF UNION RIVER TELEPHONE COMPANY D/B/A RIVAH.NET TO DIRECT COMMUNICATIONS ROCKLAND, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-282

Comments Due: October 10, 2024
Reply Comment Due: October 17, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Union River Telephone Company d/b/a Rivah.Net (Union River) and Direct Communications Rockland, Inc. (DCR) (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 Union River to DCR.[2]

Union River, a Maine corporation and rural incumbent local exchange carrier (LEC), provides service to 1,351 voice access line customers and 1,227 Internet access customers.[3] Union River's territory includes the network exchanges that serve customers in and around the communities of Otis, Mariaville, Amherst, Aurora, Waltham, Great Pond, Osborn, Deblois, and Beddington.[4] In addition to these communities, Union River serves 9 of the 35 unorganized territories and Passamaquoddy Tribal Land in Washington County and 5 of the 15 unorganized territories in Hancock County.[5]

DCR, an Idaho corporation and incumbent LEC, provides telecommunications and broadband services in Idaho.[6] DCR wholly owns the following entities: Star Telephone Company, Inc., a

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

[2] Joint Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Consent to the Transfer of Control of Union River Telephone Company d/b/a Rivah.Net to Direct Communications Rockland, Inc., WC Docket No. 24-282 (filed Sept. 9, 2024) (Application). Applicants filed a supplement on September 18, 2024. Letter from John Kuykendall, Consultant for Union River Telephone Company d/b/a/ Rivah.Net, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-282 (filed Sept. 18, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 2, 4, 6.

[4] *Id*. at 6.

[5] *Id*.

[6] *Id*. at 2, 4.

Louisiana corporation operating as a rural incumbent LEC in Louisiana; Direct Communications Cedar Valley, LLC (DCCV), a Utah limited liability company operating as a rural incumbent LEC in Utah that wholly-owns Rico Telephone Company, a Colorado corporation operating as a rural incumbent LEC in Colorado; and UniTek, Inc., a Maine corporation operating as a holding company, which wholly-owns UniTel, Inc. (UniTel) and UniCap, Inc. (UniCap), both Maine corporations[7] UniTel, a rural incumbent LEC, provides telecommunications services to approximately 2,855 access lines in Kennebec, Penobscot, and Waldo Counties in central Maine.[8] UniCap, a reseller of interexchange long distance services, provides services in the service area of UniTel.[9] DCR is wholly owned by Direct Management Company, LLC (DMC), an Idaho limited liability company, by means of common stock voting interest.[10] DMC's Members have an indirect interest in DCR by and through their DMC membership.[11] The DMC Members are the following U.S. citizens: Timothy May, President/Manager of DCR's Board of Dirctors (41.50%); Scott Hendrickson, Secretary/VP of Operations of DCR's Board of Directors, (18.50%); Jeremy Smith (18.50%); and Kip Wilson (18.50%).[12] Applicants assert that none of the foregoing direct and indirect interests held by DCR overlap with any service areas or fiber facilities of Union River.[13]

Pursuant to the terms of the proposed transaction, DCR proposes to acquire, through transfer of control, all the operations and assets of Union River.[14] Upon consummation of the proposed transaction, Applicants state that Union River and DCR will continue to hold domestic Section 214 authority in their respective serving areas.[15] Applicants also state that Union River will continue to exist and operate under its existing corporate structure.[16]

Applicants request streamlined processing and assert that the proposed transaction is consistent with the public interest, convenience, and necessity.[17] Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[18]

Joint Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Consent to the Transfer of Control of Union River

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[7] *Id*. at 4, 7-8.

[8] *Id.* at 8; *see also Domestic Section 214 Application Granted Subject to Condition*, Public Notice, WC Docket No. 21-460, 37 FCC Rcd 408 (WCB 2022), Attach. to Supplement.

[9] Application at 8.

[10] *Id*. at 4.

[11] *Id.* at 4-5; *see also* Application for Authorization Pursuant to Section 214 of the Communications Act of 1934 for Transfer of Control of UniTek, Inc. to Direct Communications Rockland, Inc., WC Docket 21-460, at 5 (filed Nov. 22, 2021), Attach. to Supplement.

[12] Application at 4-5, Exh. B.

[13] *Id.* at 8, 10, 12.

[14] *Id*. at 6.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 8-10.

[18] 47 CFR § 63.03(c)(1)(v).

Telephone Company d/b/a Rivah.Net to Direct Communications Rockland, Inc., WC Docket No. 24-282 (filed Sept. 9, 2024).

GENERAL INFORMATION

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

Interested parties may file comments 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.

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

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

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

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

presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[19] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

-FCC-

[19] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

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

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

DA 24-1002
Released: September 26, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMPLIANCE DATES AND PROVIDES GUIDANCE ON INFORMATION COLLECTION REQUIREMENTS FOR LOCATION-BASED ROUTING FOR WIRELESS 911 CALLS

PS Docket Nos. 18-64; 24-287[1]

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces that the U.S. Office of Management and Budget (OMB) recently completed the approval process for information collection requirements adopted by the Federal Communications Commission (Commission) in the January 2024 Report and Order on Location-Based Routing for Wireless 911 Calls. In the *Report and Order*, the Commission adopted rules for Commercial Mobile Radio Service (CMRS) providers to implement location-based routing for wireless 911 voice calls and real-time text (RTT) communications to 911.[2] These rules included new information collection requirements under the Paperwork Reduction Act (PRA) that required OMB approval. On September 10, 2024, OMB approved the information collection requirements contained in the Commission's location-based routing rules, and on September 26, 2024, the Office of the Federal Register published a notice announcing OMB approval.[3] Accordingly, compliance with the information collection requirements at section 9.10(s)(4)-(5) of part 47 of the Code of Federal Regulations (CFR) is now required. In this Public Notice, the Bureau also provides guidance on compliance with these requirements.

Location-Based Routing Certifications and Reports

Under section 9.10(s)(4) of part 47 of the CFR, CMRS providers must file certain certifications and reports within 60 days after each compliance date specified in the rules.[4] Nationwide CMRS providers must comply with location-based routing requirements for wireless voice calls by **November 13, 2024**.[5] Non-nationwide CMRS providers must comply with location-based routing requirements for wireless voice calls and all CMRS providers must comply with location-based routing requirements for

[1] For administrative convenience, we are opening a new docket for the filing of location-based routing certifications pursuant to section 9.10(s)(4)(i)(A) and (s)(4)(i)(C) of part 47 of the CFR. This docket is only for location-based routing certifications. The original rulemaking docket, PS Docket No. 18-64, remains open for other rulemaking-related matters, including notifying the Commission of the dates and terms of any alternate time frames established by Public Safety Answering Points (PSAPs) and Commercial Mobile Radio Service (CMRS) providers pursuant to section 9.10(s)(5) of part 47 the CFR.

[2] *Location-Based Routing for Wireless 911 Calls,* PS Docket No. 18-64, Report and Order, FCC 24-4, 2024 WL 356874 (Jan. 26, 2024), Erratum (Mar. 13, 2024) (*Report and Order*).

[3] 49 Fed. Reg. 78823.

[4] 47 CFR § 9.10(s)(4).

[5] 47 CFR § 9.10(s)(1)(i); *Public Safety and Homeland Security Bureau Announces the Effective and Compliance Dates of Rules Adopted Pursuant to the Report and Order on Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Public Notice, DA 24-259, 2024 WL 1137985, at *1 (PSHSB Mar. 14, 2024) (*LBR Compliance Date Notice*).

RTT communications to 911 by **May 13, 2026**.[6] Accordingly, the deadlines for certifications and reports following each of these deadlines are:

- By **January 12, 2025**, nationwide CMRS providers must make certifications regarding compliance for 911 voice calls and report certain information to the Commission.
- By **July 12, 2026**, non-nationwide CMRS providers must make certifications regarding compliance for 911 voice calls and report certain information to the Commission, and all CMRS providers must make certifications regarding compliance for real-time text (RTT) communications to 911 and report certain information to the Commission.

Certifications. By the above deadlines, CMRS providers must certify that they are in compliance with the requirements that are applicable to them at that time.[7] CMRS providers must also certify that neither they nor any third party they rely on to obtain location information or associated data used for compliance with those rules will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law.[8] The certification must also state that the CMRS provider and any third parties it relies on to obtain location information or associated data used for compliance with those rules have implemented measures sufficient to safeguard the privacy and security of such location information or associated data.[9]

The rules do not require that the certification take any particular form or use any particular language. Providers must file their certifications using the Commission's Electronic Comment Filing System (ECFS) and all certifications must reference **PS Docket No. 24-287**.

Reports. CMRS providers must provide certain information to the Commission to ensure compliance with the location-based routing requirements adopted in the *Report and Order*, including the identification of specific network architecture, systems, and procedures used for compliance and data on the use of location-based routing for live wireless 911 calls.

In particular, CMRS providers must identify specific network architecture, systems, and procedures used for compliance with section 9.10(s)(1)(i) and (ii) and (s)(2) of part 47 of the CFR, including the extent to which the CMRS provider validates location information for routing purposes and the validation practices used in connection with this information.[10] These reports are due on the same dates as the certifications discussed above (i.e., January 12, 2025 and July 12, 2026, as applicable).

CMRS providers must also collect and report aggregate data on the routing technologies used for all live wireless 911 voice calls in the locations specified for live 911 call location data[11] for a 30-day

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[6] 47 CFR § 9.10(s)(1)(ii), (s)(2); *LBR Compliance Date Notice* at *1.

[7] 47 CFR § 9.10(s)(4)(i)(A).

[8] 47 CFR § 9.10(s)(4)(i)(C).

[9] *Id.*

[10] 47 CFR § 9.10(s)(4)(i)(B).

[11] CMRS providers providing service in any of the Test Cities or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls in those areas. 47 CFR § 9.10(i)(3)(ii). The "Test Cities" are the six cities (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan Borough) and surrounding geographic areas that correspond to the six geographic regions specified by the February 7, 2014 ATIS Document, "Considerations in Selecting Indoor Test Regions," for testing of indoor location technologies. 47 CFR § 9.10(i)(1)(vi). Non-nationwide CMRS providers that operate in a single Test City need only report live 911 call data from that city or portion thereof that they cover. 47 CFR § 9.10(i)(3)(ii)(D). Non-nationwide CMRS providers that operate in more than one Test City must report live 911 call data only in half of the regions (as selected by the provider). *Id.* Non-nationwide CMRS providers that do not provide coverage in any of the Test Cities can satisfy the requirement by collecting and reporting data based on the largest county within its footprint. 47 CFR

(continued….)

period beginning on the applicable compliance dates.[12] CMRS providers must retain live wireless 911 voice call data for a period of 2 years.[13] CMRS providers are only required to report on live call data for 911 voice calls. (There is no live call data reporting requirement for RTT communications to 911.[14]) CMRS providers may report aggregate data for each of the three reporting categories enumerated under section 9.10(s)(4)(ii)(A)(*1*)-(*3*) of part 47 of the CFR, and they are not required to report live call data on a more granular basis (e.g., on a per-morphology basis) as is required for indoor location accuracy live call reporting.[15]

Specifically, CMRS providers must collect and report the following data, expressed as both a number and percentage of the total number of live wireless 911 voice calls collected during the 30-day period:

- Live wireless 911 voice calls routed with location-based routing using location information that meets the timeliness and accuracy thresholds defined in section 9.10(s)(3)(i)(A)-(B) of part 47 of the CFR;[16]
- Live wireless 911 voice calls routed with location-based routing using location information that does not meet the timeliness or accuracy thresholds defined in section 9.10(s)(3)(i)(A)-(B) of part 47 of the CFR; and
- Live wireless 911 voice calls routed using tower-based routing.[17]

There is no required form for submission of location-based routing reports. CMRS providers may file their reports with the Commission electronically by using the following procedures:

- CMRS providers should submit their completed reports with a cover letter which includes the date of submission; name of CMRS provider; and name and contact information of person submitting the report.
- CMRS providers should submit completed reports with the cover letter to the FCC at:

LBR911reports@fcc.gov

CMRS providers may request confidential treatment of their location-based routing reports pursuant to section 0.459 of part 47 of the CFR by submitting a request with their report.[18] Despite any grant of confidentiality pursuant to section 0.459 of part 47 of the CFR, the Commission reserves the right

§ 9.10(i)(3)(ii)(E). Where a non-nationwide CMRS provider serves more than one of the ATIS Emergency Services Interconnection Forum (ESIF) morphologies, it must include a sufficient number of representative counties to cover each morphology. *Id.*

[12] 47 CFR § 9.10(s)(4)(ii)(A).

[13] *Id.*

[14] *Report and Order* at *33, para. 97.

[15] *See* 47 CFR § 9.10(i)(3)(ii)(C).

[16] Section 9.10(s)(3)(i)(A)-(B) of part 47 of the CFR specifies that location information reports the horizontal location uncertainty level of the device within a radius of 165 meters at a confidence level of at least 90%, and the location is available to the CMRS provider network at the time of routing the wireless 911 voice call.

[17] Tower-based routing is the use of the location of the first cell tower receiving the call to determine the nearest PSAP and route the call accordingly. *See Report and Order* at *2, para. 4.

[18] *See* 47 CFR § 0.459. All requests for confidential treatment must be consistent with section 0.459 of part 47 of the CFR.

to release aggregate or anonymized data in order to measure compliance with its rules, including doing so on its website.[19]

Notification Regarding Modification of Location-Based Routing Deadlines by Agreement

The rules adopted in the *Report and Order* permit PSAPs and CMRS providers to establish, by mutual agreement, deadlines different from those established for CMRS provider compliance.[20] The CMRS provider must notify the Commission of the dates of the alternate time frame within 30 days of the parties' agreement.[21] The CMRS provider must subsequently notify the Commission of the actual date by which it comes into compliance with the location-based routing requirements within 30 days of that date.[22] As a reminder, parties may not use section 9.10(s)(5) of part 47 of the CFR to delay compliance with location-based routing requirements indefinitely.[23] CMRS providers must file such notifications in **PS Docket No. 18-64**.[24]

Privacy Act Statement

Authority. The Commission is authorized to pursue this collection pursuant to the authority contained in sections 151, 152(a), 154 (i), 251(e)(3), 301, 303, 332 of part 47 of the U.S. Code.

Purpose. To improve accountability for Commercial Mobile Radio Service (CMRS) providers and transparency for the 911 community during the implementation of location-based routing for wireless 911 voice calls and real-time text communications to 911 call centers, the Commission adopted certification, reporting, and notification requirements for CMRS providers that constitute an information collection.[25] CMRS providers are directed to submit these filings to ECFS and/or the designated email address consistent with the instructions in this Public Notice. ECFS collects from each filer the filer's name(s), address, email address (optional), IP address and operating system, and any information contained in the filings and attachments.[26] The Commission uses this information to inform its decision-making, implementation, and enforcement activities.

Routine Uses. The FCC may release information provided via the filings submitted pursuant to section 9.10(s)(4)-(5) of part 47 of the CFR when necessary and appropriate under section 552a(b) of part 5 of the U.S. Code to: the public as under FCC regulations requiring public disclosure of the information contained in our records;[27] to third parties, including individuals and businesses in the communications industry and public safety, FCC vendors and their contractors, and to other federal agencies or state, local, U.S. territorial, and Tribal government entities to administer, support, participate in, or receive information related to, FCC programs and activities, or to ensure compliance with the confidentiality and other rules regarding information sharing in the FCC's programs and activities; to other federal agencies or to other administrative or adjudicative bodies before which the FCC is authorized to appear; to federal,

[19] *Report and Order* at *33, para. 95.

[20] 47 CFR § 9.10(s)(5).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *See* 47 CFR § 9.10(s)(4)-(5).

[26] FCC, *Privacy Act Statement*, https://www.fcc.gov/ecfs/privacy-statement/ECFS_PAS.pdf (last visited Aug. 27, 2024) (*ECFS Privacy Act Statement*); *see also* Federal Communications Commission, *Privacy Act; System of Records*, 88 Fed. Reg. 87774 (Dec. 19, 2023); FCC, *Privacy Impact Assessment (PIA) for Electronic Comment Filing System Version 4.0 (ECFS 4.0) Boundary* at 5 (Nov. 2022), https://www.fcc.gov/sites/default/files/pia-ecfs.pdf.

[27] *ECFS Privacy Act Statement*.

state, local, Tribal, international, or multinational law enforcement when FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, or order; to Federal agencies, non-Federal entities, their employees, and agents for the purpose of detecting and preventing fraud, waste, and abuse in Federal programs; and to non-federal personnel, including contractors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

A complete list of the routine uses can be found in the system of records notices associated with this collection, FCC/OS-1, Electronic Comment Filing System (ECFS) and FCC-2, Business Contacts and Certifications, posted at https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information.

Disclosure. Submission of certification and reporting information is mandatory for CMRS providers pursuant to section 9.10(s)(4) of part 47 of the CFR. Submission of notification of the dates and terms of agreements is mandatory for CMRS providers that establish, by mutual consent, deadlines different from those established for CMRS provider compliance under the rules pursuant to section 9.10(s)(5) of part 47 of the CFR. Failure to comply with these rules may result in enforcement action by the Commission.

Filing Instructions

CMRS providers may file their certifications pursuant to section 9.10(s)(4)(i)(A) and (s)(4)(i)(C) of part 47 of the CFR and notifications of modification of deadlines by agreement pursuant to section 9.10(s)(5) of part 47 of the CFR in ECFS. Certifications must reference **PS Docket No. 24-287**, and notifications of modification of deadlines by agreement must reference **PS Docket No. 18-64**. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Electronic Filers: Certifications and notifications of modification of deadlines by agreement 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, D.C., 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).

CMRS providers may submit completed reports pursuant to section 9.10(s)(4)(i)(B) and (s)(4)(ii) of part 47 of the CFR with a cover letter to the FCC at: LBR911reports@fcc.gov**.**

Further Information

For further information, please contact Rachel Wehr, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-1138 or rachel.wehr@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Cybersecurity Labeling for Internet of Things	)	PS Docket No. 23-239

ORDER GRANTING EXTENSION OF TIME

Adopted: September 26, 2024 **Released: September 26, 2024**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this Order, the Federal Communications Commission's (FCC or Commission) Public Safety and Homeland Security Bureau (Bureau) grants the requests for Extension of Time (Extension Requests) filed by CTIA[1] and TÜV Rheinland of North America, Inc. (TÜV Rheinland)[2] (together, Parties), which request a 10 day extension of time, until October 11, 2024, to file applications for Cybersecurity Labeling Administrator (CLA) and/or Lead Administrator in the above-captioned proceeding. The Bureau finds that the Parties' request for an extension of time is warranted to ensure applicants have sufficient time to prepare full and informed responses and thus extends the CLA and Lead Administrator application filing deadline to October 11, 2024.

2. On September 10, 2024, the Bureau adopted a Public Notice announcing a 15-business day filing window for applications from entities seeking designation by the Commission as a CLA and/or Lead Administrator, which opened on September 11, 2024 and is to close on October 1, 2024. The Bureau indicated that while it would not accept applications after October 1, "applicants requiring additional time may, in accordance with Section 1.46 of the Commission's rules, request an extension of time for up to 10 additional calendar days to complete their applications."[3]

II. DISCUSSION

3. CTIA requests an extension to consult with "subject matter experts throughout the company; collect information from various departments across CTIA and its affiliates and subsidiaries; and compile this information into an appropriate narrative response."[4] CTIA notes that it would be a

[1] CTIA, *CTIA Motion for Extension of Time to File CLA Application,* PS Docket No. 23-239, (filed Sept. 24, 2024), https://www.fcc.gov/ecfs/document/10924143814714/1 (CTIA Request).

[2] TÜV Rheinland of North America, Inc., *Request for Extension of Application Deadline*, PS Docket No. 23-239 (filed Sept. 23, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/1092386416152 (TÜV Rheinland Request).

[3] 47 CFR § 1.46; *Public Safety and Homeland Security Bureau Announces 15-Business Day Filing Window for Cybersecurity Labeling Administrator and Lead Administrator Applications Under the Cybersecurity Labeling for Internet of Things Program*, Public Notice, PS Docket No. 23-239, at 1, para. 1 & n.1 (Sept. 10, 2024) (*Notice*).

[4] CTIA Request at 2.

challenge to prepare a complete application in the time allotted by the Public Notice and that it would be in the public interest to grant an extension, accordingly.[5] CTIA argues that granting this extension is consistent with Commission precedent and would not cause any harm to or impact any other party seeking CLA designation, as the process is not subject to public notice and comment and applications will be presumed confidential.[6] TÜV Rheinland also requests additional time to accommodate for key personnel who have recently left the organization.[7]

4. We grant a 10 calendar day extension of time for entities to file applications for CLA and/or Lead Administrator in this proceeding. As set forth in section 1.46 of the Commission's rules,[8] the Commission does not routinely grant extensions of time. In this case, however, the extension request is limited to only 10 days and will allow potential applicants with additional time to engage key employees and compile the information necessary to prepare full and complete applications to support the Commission's IoT Labeling Program as administrators. We therefore grant the Parties' Extension Requests and extend the application filing window in this proceeding to October 11, 2024.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and sections 0.204, 0.392, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.392, 1.46, the Requests for Extension of Time are **GRANTED**.

6. **IT IS FURTHER ORDERED** that the date to file Cybersecurity Labeling Administrator and Lead Administrator applications in response to the *Notice* **IS EXTENDED** to October 11, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau

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

[6] *Id.* at 3.

[7] TÜV Rheinland Request at 1.

[8] 47 CFR § 1.46.

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. 24-1004

Report No. SAT-01857 **Friday September 27, 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-STA-20240905-00197 E S2133 Alascom, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 09/25/2024

On September 25, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Alascom, Inc. for a period of 30-days, to perform telemetry, tracking, and command (TT&C) operations necessary to de-orbit the SPACEWAY-2 satellite. Alascom is authorized to conduct TT&C necessary to: (i) drift SPACEWAY-2 from the 138.9° W.L. to the 138.75° W.L. orbital location; (ii) maintain the satellite at that location with an east/west station keeping tolerance of +/- 0.1°; and (iii) de-orbit the satellite from the 138.75° W.L. orbital location. TT&C is performed using the following center frequencies: 19701.75 MHz and 19702.75 MHz (space-to-Earth); and 29503.9063 MHz and 29511.7188 MHz (Earth-to-space).

SAT-STA-20240910-00200 E S3143 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/24/2024

Nature of Service: Fixed Satellite Service

On September 24, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority 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-AMD-20231013-00249 S3178 Capella Space Corp.

See ICFS File No. SAT-LOA-20230718-00177 for a description of the action taken.

SAT-AMD-20240418-00083 S3178 Capella Space Corp.

See ICFS File No. SAT-MOD-20240329-00071 for a description of the action taken.

SAT-LOA-20230718-00177 S3178 Capella Space Corp.

The Satellite Programs and Policy Division has determined that Capella Space Corp. has met the launch and begin operations milestone associated with its grant of authority to construct, deploy and operate a constellation of two non-geostationary orbit space stations, Acadia-3 and Acadia-4 (Call Sign S3178), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d).

SAT-MOD-20240329-00071 S3178 Capella Space Corp.

INFORMATIVE

The Satellite Programs and Policy Division has determined that Capella Space Corp. has met the launch and begin operations milestone associated with its grant of authority to construct, deploy and operate two additional non-geostationary orbit space stations, Acadia-5 and Acadia-6 (Call Sign S3178), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d).

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

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

In the Matter of	)	
	)	
Community Service Broadcasting Foundation, Inc.	)	Facility ID No. 769057
KKBX, Caliente, Nevada	)	File No. 0000237978
	)	
SSR Communications, Inc.	)	Facility ID No. 203590
KCAY, Dammeron Valley, Utah	)	File No. 0000237979
	)	

MEMORANDUM OPINION AND ORDER
AND
ORDER TO SHOW CAUSE

Adopted: September 27, 2024 **Released: September 27, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION.

1. In this Memorandum Opinion and Order, we dismiss the minor modification applications (the Applications) of Community Service Broadcasting Foundation, Inc. (CSBF), permittee of noncommercial educational (NCE) FM station KKBX, *formerly* KIXK,[1] Channel 215C3, Caliente, Nevada (KKBX),[2] and SSR Communications, Inc. (SSR), permittee of FM station KCAY, Channel 264C3, Dammeron Valley, Utah (KCAY).[3] We also Order KCAY to show cause as to why its authorization[4] should not be modified to specify operation on Channel 299A at Caliente, Nevada in lieu of Channel 264C3 at Dammeron Valley, Utah within 30 days of the date of this Order.

II. BACKGROUND.

2. CSBF proposes to modify the community of license for KKBX from Channel 215C3, Caliente, Nevada, to Channel 215A, Dammeron Valley, Utah, as the community's second local service (the CSBF Application). SSR proposes to modify the community of license for KCAY from Channel 264C3, Dammeron Valley, Utah to Ivins, Utah, as the community's first local transmission service (the SSR Application). Although the SSR Application proposes to modify the community of license for KCAY, the station would use the same tower and equipment as is authorized in its construction permit for Channel 264C3, Dammeron Valley. CSBF and SSR simultaneously filed the Applications pursuant to section 73.3573(g) of the Commission's rules, which sets forth the requirements for modifying an FM station authorization to specify a new community of license without providing an opportunity for competing expressions of interest.[5] Among other requirements, an applicant for such a minor modification

[1] Effective July 18, 2024, the call sign of KIXK was change to KKBX. *See* Application File No. 0000248967.

[2] On August 8, 2024, CSBF filed an amendment to its application requesting that the Commission process its application separately from the SSR Application in the event that SSR Application is denied.

[3] Effective January 4, 2022, the call sign for this new FM station was changed to KCAY.

[4] Application File No. 0000195819.

[5] *See* 47 CFR § 73.3573(g). *See also Modification of FM and TV Authorizations to Specify a New Community of License,* Report and Order, 4 FCC Rcd 4870 (1989) (*Community of License*), *recon. granted in part,* Memorandum (continued….)

must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments or assignments.[6] We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.[7]

3. In support of its application, CSBF claims that although Caliente presently has no licensed services, the community would not be deprived of its first local radio service because NCE station KMYQ(FM) will remain at Caliente. CSBF asserts that the reallotments of KKBX to Dammeron Valley as a first local service and KCAY to Ivins each represents a preferential arrangement of the Table of FM Allotments,[8] as Ivins would receive a first local service, and Caliente would not be deprived of potential radio service.[9] In addition, SSR claims that although Dammeron Valley presently has no licensed service, the community would not be deprived of its first local radio service due to the CSBF Application proposing KKBX's community of license change to Dammeron Valley.[10] SSR contends that Ivins is a *bona-fide community* for allotment purposes deserving of its first commercial FM service.[11]

III. DISCUSSION

4. A staff engineering analysis of the SSR Application reveals that both the existing facility on Channel 264C3 at Dammeron Valley,[12] and the proposed facility on Channel 264C3 at Ivins cover 100% of the St. George, Utah urbanized area (St. George UA). The SSR Application is therefore considered an Intra-UA move within the St. George UA under Priority (4).[13] As was noted above, the SSR Application does not propose any change to the station's technical facilities. In past intra-urbanized area cases where we have found a preferential arrangement of assignments, the applicant demonstrated grant of its application would result in some actual service improvement under Priority (4), principally greater population coverage.[14] SSR cannot offer the same public interest justification for its modification request

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Opinion and Order, 5 FCC Rcd 7094 (1990); *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14213-23, paras. 4-18 (2006) (*2006 Community of License Order*).

[6] 47 CFR § 73.3573(g)(1).

[7] *Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 F.C.C.2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

[8] 47 CFR § 73.202(b).

[9] KIXK Comprehensive Engineering Exhibit at 2.

[10] KCAY Ivins Comprehensive Engineering Exhibit at 1.

[11] SSR states that Ivins has a 2020 US Census population of 8,978 persons. It has its own U.S Post Office and zip code (84738), as well as a city hall and municipal government, fire department, elementary school, charter school, city cemetery, churches, animal shelter, civic organizations, and other indicia that all identify as being a part of Ivins. *See* KCAY Ivins Comprehensive Engineering Exhibit at 2.

[12] *See* Application File No. 0000195819.

[13] *See Radio One Licenses*, Letter Decision, 26 FCC Rcd 14325, 14327 (MB 2011); *see also Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259, 10263-64 (MB 2011) (deciding post-*Rural Radio* that relocation of a community of license within the same Urbanized Area is analyzed under Priority (4)).

[14] *See, e.g., Call Communications Group, Inc.*, Letter Decision, 38 FCC Rcd 1109, n.1 (MB 2023) (stating net service gain of 374,131 persons represented a preferential arrangement of allotments); *Marissa G. Repp, et al.,* Letter Decision, 27 FCC Rcd 13090, 13094 (stating application proposed a preferential arrangement of allotments under Priority (4) because the intra-urbanized area move would provide a net gain in reception service of 260,726 persons); *Emmis Austin Radio Broadcasting, L.P.; Educational Media Foundation; San Antonio Radio Works, LLC,* Letter Decision, 35 FCC Rcd 556, 562 (MB 2020) (stating net gain in the reception service serves the public interest); *Lawrence N. Cohn, Esq., James A. Koerner, Esq.*, Letter Decision, 29 FCC Rcd 4799, 4803 (MB 2014)

(continued….)

in this case and does not satisfy Priority (4).[15] We therefore conclude that the SSR Application does not represent a preferential arrangement of assignments pursuant to section 73.3573(g)(1) of our rules.[16]

5. *SSR Application History.* SSR submitted the original Petition for Rulemaking (Petition) proposing a new allotment on Channel 264A at Caliente, Nevada.[17] SSR was the high bidder in FM Auction 109 (A109) for the Caliente permit (MM-FM1226-A).[18] On November 15, 2021, SSR filed an amendment to its A109 long-form application proposing to change the facility's community of license from Channel 264A at Caliente, to Channel 264A at Dammeron Valley.[19] The staff concluded the SSR proposal would trigger the Urbanized Area Service Presumption (UASP),[20] as the station's facilities through a minor modification application could cover more than 50% of the St. George UA, and therefore requested amendment to the A109 long-form application.

6. On December 14, 2021, SSR filed another amendment requesting substitution of Channel 299A in lieu of Channel 264A at Caliente; the Audio Division granted the amended application on December 28, 2021.[21] Three business days later, on January 3, 2022, SSR filed a new minor modification application seeking another change to the community of license for KCAY from Channel 299A at Caliente, to Channel 299A at Dammeron Valley, as the community's first local service.[22]

7. On June 6, 2022, SSR filed an amendment requesting to substitute Channel 264A for Channel 299A at Dammeron Valley.[23] Even though the Media Bureau had rejected SSR's previous request to move to Channel 264A at Dammeron Valley based on the staff analysis showing that would trigger the UASP, the June 6, 2022, amended application failed to rebut the *Rural Radio* UASP. On June 15, 2022, due to staff error, the Audio Division granted the amended community of license application

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(stating that the benefits of providing an additional service to more than 1.3 million listeners outweigh the identified service losses).

[15] *Southwest FM Broadcasting Co. Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7692, 7693, ¶3 (2015) (noting that the Commission explicitly stated in the *Rural Radio* proceeding that a station proposing to move within the same urbanized area is required to make a showing under Priority (4) "by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area").

[16] 47 CFR § 73.3573(g)(1); *see also Central Florida Educational Foundation, Inc.,* Letter Decision, 38 FCC Rcd 6786, 6788 (MB 2023) and *Central Florida Educational Foundation, Inc.,* Letter Decision, 38 FCC Rcd 6790, 6793 (MB 2023) (determining that re-designation of a facility to a different community of license within the same urbanized area without anything more does not satisfy Priority 4).

[17] *See Caliente, Nevada,* Notice of Proposed Rule Making, 34 FCC Rcd 1125 (MB 2019) (proposing Channel 264A at Caliente under Priority (3) as a first local service). *See Caliente, Nevada,* Report and Order, 34 FCC Rcd 3831 (MB 2019) (allotting Channel 264A at Caliente, Nevada).

[18] *See FCC Announces Winning Bidders for Auction 109*, Public Notice, Attachment A, 36 FCC Rcd 12478 (2021)(*A109 Public Notice)*.

[19] *See* Application File No. BNPH-20181129AAC.

[20] *See Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures,* Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2572-77 ¶¶ 30, 35, 38, and n.97 (2011) (*Rural Radio*) (establishing a rebuttable urbanized area service presumption (UASP) that, when the proposed community is located in an urbanized area or could, through a minor modification application, cover more than 50% of an urbanized area, the Commission will treat the application, for section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license); *recon granted in part and denied in part, Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures,* Second Order on Reconsideration*,* 27 FCC Rcd 12829 (2012).

[21] *See Broadcast Actions*, Public Notice, Report No. 50147 (MB 2022).

[22] *See* Application File No. 0000178430.

[23] *Id.*

specifying Channel 264A at Dammeron Valley.[24] On July 27, 2022, SSR filed a minor modification application requesting to upgrade from Class A to Class C3 at Dammeron Valley covering 100% of the St. George UA; the Audio Division granted the application on September 6, 2022.[25] SSR now proposes the reallotment of KCAY, Channel 264C3 from Dammeron Valley, to Ivins, Utah, as the community's first local service with no technical changes.

8. We find that SSR's chain of amendments and minor modification applications to its post-auction A109 long-form application circumvented the Commission's reallotment procedures as clarified in *Rural Radio*.[26] In the *2006 Community of License Order*,[27] as codified in section 73.3573(g) of the rules,[28] the Commission gave applicants the opportunity to file one-step community of license change applications, provided that four conditions were met: (1) that the proposed community of license change represents a preferential arrangement of allotments; (2) that the facilities specified at the proposed community of license are (in this case) mutually exclusive with the applicant's current assignment as the winning auction bidder; (3) that the applicant complies with the local public notice provisions of section 73.3580 of the rules; and (4) that the non-reserved band applicant (as is the case here) must demonstrate the existence of a suitable and fully compliant assignment or allotment site.[29]

9. SSR's January 3, 2022, community of license modification to Channel 299A at Dammeron Valley violated the requirements of section 73.3573(g)(2) because the move to Dammeron Valley on Channel 299A was not mutually exclusive with the original auction allotment on Channel 264A at Caliente.[30] SSR's December 14, 2021, application to change its assigned channel from 264A to 299A in Caliente was a permissible channel substitution consistent with our rules.[31] We find however that the immediately ensuing January 3, 2022, application to change the KCAY community of license from Channel 299A at Caliente to the same channel at Dammeron Valley was a major change subject to dismissal pursuant to the *A109 Public Notice* because the proposal was not mutually exclusive with the original auction allotment on Channel 264A at Caliente. We find also that the June 6, 2022, amendment specifying Channel 264A in lieu of Channel 299A at Dammeron Valley was not in compliance with 73.3573(g)(1),[32] because the proposal would only be allowed under the conditions set forth in the *2006 Community of License Order* as clarified in *Rural Radio*, specifically the need to demonstrate that the community of license change represent a preferential arrangement of assignments under section 73.3573(g)(1).[33] Thus, the combination of the two granted applications specifying KCAY's community of

[24] *See Actions,* Public Notice, Report No. PN-2-220617-01 (MB 2022).

[25] *See Actions,* Public Notice, Report No. PN-2-220908-01 (MB 2022).

[26] *See Loretto, Tennessee and Killen, Alabama,* Report and Order, 21 FCC Rcd 5834 (MB 2006) (stating that the Commission will carefully review all two-step reallotment proposals).

[27] *See supra* note 5.

[28] 47 CFR § 73.3573(g).

[29] *Id*.

[30] *Id*. § 73.3573(g)(2); *see also A109 Public Notice, supra* at 12484 ¶34 (stating that the winning bidder's long-form application may only propose technical facilities that are either identical to or are considered minor changes with respect to each permit for which it was the winning bidder and if information submitted on the FCC Form 2100, Schedule 301-FM application by the winning bidder indicates that the applicant has effected a major change relative to information reported on the applicant's short-form application (FCC Form 175), then the long-form application will be dismissed and the applicant will be in default").

[31] 47 CFR § 73.3573(a)(1)(iv).

[32] *Id*. § 73.3573(g)(1).

[33] 47 CFR § 73.3573(g)(1). In this case, the community of license proposal did not result in a preferred arrangement of allotments under Priority (4) as clarified in *Rural Radio, supra* at 2577 ¶ 38. Caliente had three local services

(continued….)

license change to Channel 264A, Dammeron Valley, and the subsequent upgrade to 264C3 at Dammeron Valley violated the requirements of our *Rural Radio* policy. Based on the foregoing, we dismiss the SSR Application.

10. *Show Cause Order*. In light of our conclusion that SSR's move to Dammeron Valley violated the requirements of section 73.3573(g)(1) because the move did not result in a preferential arrangement of assignments, we require SSR to show cause as to why its authorization should not be modified to specify operation on Channel 299A at Caliente, Nevada in lieu of Channel 264C3 at Dammeron Valley, Utah.

11. Section 316(a)(1) of the Communications Act of 1934, as amended (Act), authorizes the Commission to modify any station license or construction permit "if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter [i.e., the Act] or of any treaty ratified by the United States will be more fully complied with.[34]" Here, we believe that the proposed change promotes the public interest and is necessary because SSR's community of license application, as amended, specifying Channel 264A at Dammeron Valley did not comply with section 73.3573(g)(1).[35] We conclude that absent a compelling showing consistent with *Rural Radio* policy,[36] under Priority (4),[37] the retention of a third local service at Caliente is preferred over the retention of 25th local service at the St. George UA.[38]

12. Section 316(a)(1) of the Act requires that we notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford the permittee/licensee at least 30 days to respond.[39] This procedure is codified in section 1.87 of the Commission's rules.[40] Pursuant to section 1.87, SSR may, no later than 30 days after the date of this Order to Show Cause, file a written statement showing with particularity as to why the KCAY authorization should not be modified to specify operation on Channel 299A at Caliente, Nevada. We may call upon SSR to furnish additional information. If SSR raises substantial and material questions of fact, a hearing may be required to resolve such questions of fact. Upon review of the statements and/or additional information furnished, the Commission may modify SSR's authorization, retain SSR's existing authorization, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, SSR will be deemed to have

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while the St. George UA already has numerous local AM and FM stations. Absent a compelling showing, the Dammeron Valley community of license modification is considered a proposal under Priority (4), serving the St. George UA in lieu of the community of Dammeron Valley, and it does not satisfy Priority (3) of the Commission's allotment priorities, first local service. In *Community of License,* the Commission stated that we will carefully monitor situations when there are situations in which, consistent with the allotment priorities and policies, a licensee increase its total population served by moving from a rural community to a suburban community. *Community of License, supra* at 4873 ¶ 27.

[34] 47 U.S.C. § 316(a)(1). The Commission's authority to modify licenses under section 316(a)(1) is well established. The U.S. Court of Appeals for the District of Columbia Circuit has recognized the Commission's "broad power to modify licenses" under section 316(a)(1), explaining that the Commission "need only find that the proposed modification serves the public interest, convenience and necessity." *See California Metro Mobile Communications v. FCC,* 365 F.3d 38, 45 (D.C. Cir. 2004).

[35] 47 CFR § 73.3573(g)(1).

[36] *Rural Radio, supra* at 2577 ¶ 38.

[37] *See Revision of FM Assignment Policies and Procedures, supra* at n.7.

[38] A staff engineering analysis determines that there are currently 20 FM radio stations (including KCAY) and 5 AM radio stations serving 50% or more of the St. George UA within the 70 dBu contour for FM commercial stations, 60 dBu contour for FM noncommercial educational stations, and 2 m/Vm contour for AM stations.

[39] 47 U.S.C. § 316(a)(1).

[40] 47 CFR § 1.87.

consented to the proposed modification(s) and a final order will be issued if the modification(s) is (are) found to be in the public interest.

13. *CSBF Application.* The CSBF Application proposes to provide a second local service at Dammeron Valley under Priority (4).[41] Under Priority (4),[42] the retention of a second local service at the larger community of Caliente is preferred over a second local service to the smaller community of Dammeron Valley.[43] A staff engineering analysis reveals that the proposal would result in a net population gain of 479 persons that is considered well-served by at least 21 reception services while the loss area is considered well-served by at least 6 reception services and 20 persons would lose a potential second NCE service. The Commission has stated on numerous occasions that reception service from nearby communities is not a substitute for local service.[44] We conclude that the CSBF Application does not result in a preferential arrangement of allotments pursuant to section 73.3573(g)(1) of our rules.[45] Accordingly, we dismiss the CSBF Application.

IV. CONCLUSION.

14. Accordingly, IT IS ORDERED, that pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, SSR Communications, Inc., permittee of Station KCAY, SHALL SHOW CAUSE why its authorization, Application File No. 0000195819, SHOULD NOT BE MODIFIED to specify operation on Channel 299A at Caliente, Nevada in lieu of Channel 264C3 at Dammeron Valley, Utah within 30 days of the date of this Order.

15. IT IS FURTHER ORDERED, That the Commission SHALL SEND a copy of this Memorandum Opinion and Order and Order to Show Cause by Certified Mail, Return Receipt Requested, to the following:

Matthew Wesolowski
740 Highway 49 North
Suite R
Flora, MS 39071

16. Based on the foregoing, the Applications filed by Community Service Broadcasting Foundation, Inc., Application File No. 0000237978, and SSR Communications, Inc., Application File No. 0000237979 are unacceptable for filing pursuant to section 73.3566(a) and ARE HEREBY DISMISSED.[46]

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[41] *Revision of FM Assignment Policies and Procedures, supra* at n.7.

[42] *See Deer Creek Broadcasting, LLC* et. al, Letter Decision, 23 FCC Rcd. 9553 (MB 2008)(stating that under Priority (4) it is a preferential arrangement of allotments to have a competitive local service in the larger community).

[43] Caliente, NV is a city with a 2020 US Census population of 990 persons. *See* United States Census Bureau, https://data.census.gov/all?q=Caliente%20city,%20Nevada. Dammeron Valley, Utah is a census designated place with a 2020 US Census population of 871 persons. *See* United States Census Bureau, https://data.census.gov/all?q=dammeron%20Valley,%20Utah.

[44] *See, e.g., Royston and Commerce, Georgia*, Report and Order, 15 FCC Rcd 5676, 5679 (MMB 2000), *citing, Saranac Lake, New York*, Report and Order, 6 FCC Rcd 5121 (MMB 1991), *recon. dismissed*, Memorandum Opinion and Order, 8 FCC Rcd 3066 (MMB 1993).

[45] 47 CFR § 73.3573(g)(1).

[46] 47 CFR § 73.3566(a).

17. *Additional Information*. For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov or Nazifa Sawez, Audio Division, Media Bureau, at (202) 418-7059, Nazifa.Sawez@fcc.gov.

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 24-1006
Released: September 27, 2024

FCC RESCHEDULES THE DECEMBER MEETING OF THE NORTH AMERICAN NUMBERING COUNCIL

WC Docket No. 23-1

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission (FCC or Commission) announces that the meeting of the North American Numbering Council (NANC) previously scheduled for Thursday, December 12, 2024 at 2:00 p.m. ET is cancelled and rescheduled for Friday, December 13, 2024, from 10:00 a.m. ET until 12:00 p.m. ET. The meeting will be held via video conference and will be available to the public via the Internet at http://www.fcc.gov/live. Notice of this meeting change will be published in the Federal Register.

At the meeting, the NANC will consider and vote on reports and recommendations from the following Working Groups:

- The Call Authentication Trust Anchor (CATA) Working Group regarding the regulatory treatment of international cellular roaming traffic;
- The CATA Working Group regarding foreign-originated calls, the use of indirectly obtained numbers, and the use of numbers supplied on a trial basis by interconnected Voice over Internet Protocol (VoIP) providers that obtain direct access to numbers;
- The Numbering Administration Oversight Working Group regarding number use and resale, and number reclamation, by interconnected VoIP providers that obtain direct access to numbers; and
- The Internet of Things Numbering Usage Working Group regarding the use of North American Numbering Plan numbers for the routing and addressing of Internet of Things communications.

The agenda may be modified at the discretion of the NANC Chairwoman and the Designated Federal Officer.

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

[1] *See* 5 U.S.C. Ch. 10.

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

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

–FCC–

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

In the Matter of	)	
	)	
Application of T-Mobile US, Inc., Nextel West Corp., and LB License Co, LLC for License Assignment	)))	ULS File No. 0010923038

PROTECTIVE ORDER

Adopted: September 27, 2024 **Released: September 27, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed in this proceeding, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information submitted by participants in this proceeding and information we request as relevant and material to the issues raised by the applications constitute the record on which the Commission must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."[1]

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules, unless the Commission determines, sua sponte or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules,2 that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

[1] 47 U.S.C. § 154(j).

[2] 47 CFR §§ 0.459, 0.461.

"Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the FOIA and the Commission's implementing rules; and that the Submitting Party or a Third-Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Protective Order, as the same may be amended from time to time; unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

"In-House Counsel" means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel's employer is considered his or her client.)

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Party" means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend

recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

"Third-Party Interest Holder" means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party's representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.[3]

4. *Challenge to Designation*. Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.[4] Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.[5]

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or

[3] *See* 47 CFR § 0.459(a).

[4] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

[5] *See* 47 CFR §§ 0.459(h), 0.461.

Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System (ECFS) a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.[6] Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information. In addition, one copy of each Stamped Confidential Document and Stamped Highly Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics; and Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

6. *Copying Sensitive Documents*. If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

[6] If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary's Office along with the appropriately stamped cover letter.

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*[7] Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.[8] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

10. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. A Submitting may, but is not required to, transmit the information electronically to a Reviewing Party. A

[7] This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

[8] An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential and Highly Confidential Information*. Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission*. A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN ULS FILE NO. 0010923038 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.[9] The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be

[9] If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics; and Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

16. *Requests for Additional Disclosure*. If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.[10]

17. *Client Consultation*. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

18. *No Waiver of Confidentiality*. Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *Subpoena by Courts, Departments, or Agencies*. If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

[10] 47 CFR §§ 0.442, 0.461.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions*. Substantive questions concerning this Protective Order should be addressed to Catherine Matraves, Catherine.Matraves@fcc.gov, Office of Economics and Analytics; Susannah Larson, Susannah.Larson@fcc.gov, Wireless Telecommunications Bureau; and Joel Rabinovitz, Joel.Rabinovitz@fcc.gov.

23. *Authority*. This Order is issued pursuant to sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), and authority delegated under section 0.261 of the Commission's rules, 47 CFR § 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Stamped Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share, or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides numbers of customers and revenues broken down by customer type (e.g., business) and zip code or market area (e.g., CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market, and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, or maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B

Acknowledgment of Confidentiality

ULS File No. 0010923038

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 20___.

_____

[Name]
[Position]
[Firm]
[Telephone]

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

In re Applications of	)	
	)	NAL/Acct. No. MB-202441410019
KCCS, LLC	)	FRN: 0010233484
	)	
For Consent to Transfer of Control of KSLM(AM), Salem, Oregon and K282BY, Salem, Oregon	)	Facility ID Nos. 10963, and 201439 Application File Nos. 0000184559 and 0000184560
	)	
from	)	
	)	
Cindy Wyant Smith (Transferor)	)	
	)	
to	)	
	)	
Jacqueline Smith (Transferee)	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 30, 2024 **Released: September 30, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we address apparent violations of section 310(d) of the Communications Act of 1934, as amended (Act),[2] and section 73.3540(a) of the Commission's rules (Rules)[3] that were discovered during the course of the Media Bureau's (Bureau) review of the above-captioned applications (Applications).[4] The Applications seek consent to the transfer of control of KCCS, LLC (KCCS or Licensee), licensee of stations KSLM(AM), Salem, Oregon, and K282BY, Salem, Oregon (collectively, the Stations), from Cindy Wyant Smith (Wyant Smith) to Jacqueline Smith (Smith).[5] As discussed below, we find that control of KCCS was apparently willfully transferred twice without prior Commission authorization in

[1] This *NAL* is issued pursuant to section 503(b) of the Communications Act, as amended, and section 1.80 of the FCC's Rules. *See* 47 U.S.C. § 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[2] 47 U.S.C. § 310(d).

[33] 47 CFR § 73.3540(a).

[4] Application File Nos. 0000184559 and 0000184560. *See Broadcast Applications*, Public Notice, Report No. PN-1-220210-01, at 1 (MB Feb. 10, 2022).

[5] Smith is also known as Jacqueline Crittenden. We refer to her herein as Smith.

violation of section 310(d) of the Act and section 73.3540(a) of the Rules.[6] Based upon our review of the facts and circumstances before us, we conclude that KCCS is apparently liable for a monetary forfeiture in the amount of sixteen thousand dollars ($16,000).

II. BACKGROUND

2. On August 1, 2011, Wyant Smith acquired KCCS, pursuant to a granted transfer of control application.[7] At that time, Wyant Smith was the sole member of KCCS, with 100% of the equity and voting interests in Licensee.

3. On May 1, 2014, Wyant Smith executed a Purchase Agreement (Purchase Agreement) to sell KCCS, the Stations' licenses, and the radio equipment (collectively, referred to therein as the Property) to Smith.[8] The Purchase Agreement stated that "[t]he sale, conveyance, assignment of said Property shall become effective as of the Effective Date," which was defined as May 1, 2014.[9] The Purchase Agreement further stipulated that the $250,000 purchase price was to be paid by Smith through "sweat equity," which was defined as bookkeeping and administrative services to be provided by Smith.[10] Under the Purchase Agreement, Smith's "sweat equity" services were valued at $4,630 per month and ran from September 2016 through February 2021.[11]

4. In February 2021, Smith completed the "sweat equity" services required under the Purchase Agreement.[12] Additionally, on February 9, 2021, KCCS filed with the Oregon Secretary of State an updated Articles of Organization, which was signed by Smith under penalty of perjury and listed Smith alone as a Member/Manager of KCCS.[13]

5. On October 12, 2021, Wyant Smith and Smith executed an Amendment to the Purchase Agreement (Amendment) "to correct their previous mistakes and allow the Buyer [Smith] to obtain the benefit of the bargain."[14] The Amendment stated that Smith "has fully performed under the Purchase Agreement, but the purpose of the Purchase Agreement has been frustrated by the mutual mistake of the Parties, who acknowledge that the sale and transfer of the FCC licensee and the Station[s'] FCC license[s] should have been subject to the prior approval by the FCC in accordance with 47 U.S.C. § 310 and regulations promulgated thereunder."[15] The Amendment also required Wyant Smith to indemnify Smith "for any penalties assessed by the FCC or other costs (not including attorney fees) associated with executing the Purchase Agreement pursuant to its original terms and transferring ownership of the FCC

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[6] 47 U.S.C. § 310(d); 47 CFR § 73.3540(a).

[7] Application File No. BTC-20110412AAH, granted on July 22, 2011, and consummated on August 1, 2011. *See Broadcast Actions*, Public Notice, Report No. 47539, at 1 (MB Jul. 29, 2011).

[8] *See*, Applications at KCCS, LLC Transfer of Control-Purchase Agreement Exhibit, Purchase Agreement at 1 and para 1.

[9] *Id.*

[10] *Id.*, at 1-2, para. 3.

[11] *Id.*

[12] *See Id.* at 1.

[13] *See* Email from Mark Malanzo, Esq., Attorney, Fletcher, Heald & Hildreth, to Kim Varner, Attorney-Advisor, Audio Division, FCC Media Bureau, Attach. at 4-5 (Mar. 26, 2024, 16:44 EDT) (March 2024 Response) (attaching KCCS's Articles of Organization, filed Feb. 9, 2021). KCCS also claimed to have updated its Operating Agreement in February 2021 (*See* Online Public Inspection File for Facility ID No. 10963, Ownership Reports, Additional Documents, Contracts and Agreements, KSLM-Section 73.3613 Docs-Updated (Oct. 27, 2021)), but later its counsel stated that the updated Operating Agreement was never executed. *See* March 2024 Response, Attach. at Question 3.

[14] Applications at Amendment, para. D.

[15] *Id.* at para. B.

Licensee and the Station[s] to the Buyer without prior FCC approval."[16] The Amendment further stipulated that an application for FCC approval of the transfer of control of Licensee would be "filed within ten (10) business days of the execution of this Amendment."[17] Notwithstanding this stipulation KCCS did not file the instant Applications until February 2022.[18]

6. In the course of processing the Applications, the Bureau staff reviewed the provisions of the Purchase Agreement and Amendment described above and requested further information.[19] In response, Wyant Smith filed a declaration, signed under penalty of perjury, that stated "I am the Owner of KCCS, LLC. I am also the only LLC Member with voting and equity interests in KCCS, LLC. Jacqueline Smith is the General Manager of KCCS, LLC. She is also a non-voting, non-equity LLC Member."[20] Wyant Smith further declared that "[p]ending FCC approval of the Transfer of Control, and consummation of the transaction, all of Jacqueline Smith's acts in furtherance of her official duties remain subject to my supervision and ultimate control."[21] Due to unresolved questions concerning Smith's ownership interest in KCCS, the Bureau staff requested further information to clarify the Licensee's response to the staff's previous inquiry.[22] In response, counsel for KCCS stated, in pertinent part, that "Smith received a non-voting membership interest [in KCCS] in February 2021."[23]

7. Starting in 2022, Smith and her sisters, Amanda Smith (A. Smith), Katie Wilson (Wilson), and Cynthia Ramirez (Ramirez)[24] claimed to be the co-owners of KSLM(AM). Specifically, Smith and her sisters are identified as "co-owners" in multiple social media posts on the official KSLM(AM)

[16] *Id.* at para. 1.

[17] *Id.*

[18] *See supra* note 2.

[19] *See* Applications at Reason for Amendment Exhibit (filed Oct. 3, 2022).

[20] *See*, *Id*. at Declaration of Cindy Wyant Smith (filed Oct. 3, 2022), ¶¶1-2 (Wyant Smith Declaration).

[21] *Id*. at para. 4.

[22] *See* Email from Kim Varner,, Attorney-Advisor, Audio Division, FCC Media Bureau to Sara Hinkle, Esq., Attorney, Fletcher, Heald & Hildreth (Mar. 7, 2024, 15:21 EST).

[23] *See* March 2024 Response at Question 3.

[24] Collectively, A. Smith, Wilson, and Ramirez will be referred to as sisters.

Facebook page;[25] on the official KSLM(AM) website;[26] and in a June 24, 2022, news article.[27] Additionally, the news article stated that "[t]he station [KSLM(AM)], which is a family owned business, was recently passed down in January to four sisters: general manager Jaci Smith, office manager and traffic director Katie Wilson, director of sales Cynthia Ramirez, and on-air personality Amanda Smith." The article further stated that the sisters "worked behind the scenes at KSLM for years before taking over" and quoted Smith as stating "[w]e changed the format [of KSLM(AM)] to political news talk"[28]

III. DISCUSSION

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

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[29]

Section 73.3540(a) of the Rules, which implements section 310(d) of the Act, similarly stipulates that the "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."[30] It is well-settled that "control" as used in the Act and section 73.3540(a) of the Rules encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of de facto as well as de jure control requires the prior consent of the Commission.[31]

9. In determining whether an entity has de facto control of a broadcast licensee, the Commission has traditionally looked beyond legal title and financial interests to determine who holds operational

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[25] *See e.g.* KSLM Radio, Facebook, https://www.facebook.com/photo/?fbid=2486818738121093&set=a.860241884112128 ("Check out all the new things happening at KSLM Radio!" and included a flyer with pictures of Smith and her sisters, captioned, "new ownership, family owned & operated, four sisters") (last visited Sep. 24, 2024); https://www.facebook.com/kslmradio/posts/pfbid02ANrpwhfzsVxAqZrRuesYbxc95yLsJXWYic1yDTr9kXBFh93RbMEmE2ouqbEp7ppRl (a picture of Smith and her sisters captioned "the owners of KSLM want to remind you to go VOTE!!") (last visited Sep. 24, 2024); and https://www.facebook.com/kslmradio/posts/pfbid02y6gzUVupWP2uf83ZVUGfYd1CTU5nPQdzhwQ8usTyzR2q9no3pZcURduhVtTtpQMcl ("Did you know . . . KSLM is owned by 4 sisters.") (last visited Sep. 24, 2024).

[26] In particular, on April 3, 2024, when the Bureau staff accessed the KSLM(AM) website Smith, A. Smith, and Wilson were listed as owners; Ramirez was not listed as an owner on the website, but as noted above Ramirez has claimed to be an owner of KSLM(AM) on the KSLM(AM) Facebook page, *supra* note 25, and in a news article listed *infra* in note 27. *See* Applications at Attach. Uploaded by MB (uploaded on Sep. 19, 2024, attaching KSLAM(AM) website PDF dated Apr. 3, 2024)). Later that same date, Bureau staff informed Licensee's counsel that the KSLM(AM) website listed Smith and her sisters as co-owners of KSLM(AM). At some later date, however, this information was removed from the KSLM(AM) website, which no longer lists Smith and her sisters as co-owners of KSLM(AM). *See* KSLM, https://www.kslm.news/contacts (last visited Sep. 26, 2024).

[27] Bee Flint, *A New Generation Taking KSLM Radio Forward*, Keizertimes (Jun. 24, 2022), https://www.keizertimes.com/2022/06/24/a-new-generation-taking-kslm-radio-forward.

[28] *Id.*

[29] 47 U.S.C. § 310(d).

[30] 47 CFR § 73.3540(a).

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

control of the station.[32] An entity or individual may be found to have exercised de facto control in a particular situation based on the specific facts and totality of the circumstances of the case, regardless of what interest it holds in the licensee, if any.[33] In such cases, the Commission looks to the totality of the circumstances to determine whether an entity or individual exercises control of a station, looking in particular at the station's programming, personnel, and finances.[34] A licensee's surrender of control over any one of these indicia to another entity is sufficient to find that another entity has de facto control.[35] In addition, the Commission will also consider other factors, such as whether someone other than the licensee holds themselves out to station staff and/or the public as the one who controls station affairs.[36]

10. We find that there were apparently two unauthorized transfers of control of KCCS in violation of section 310(d) of the Act[37] and section 73.3540(a) of the Rules.[38] The first unauthorized transfer of control, to Smith, apparently occurred in February 2021. Here, KCCS has admitted that since February 2021, Smith has been a member of KCCS.[39] Additionally, in the updated Articles of Organization filed with the Oregon Secretary of State on February 9, 2021, Smith is listed as the only member of KCCS.[40] The applicants have also acknowledged that Smith has "fully performed [the sweat equity services required] under the Purchase Agreement."[41] We find that the Amendment did not undo the fact that Smith had already fully performed the consideration for the purchase of KCCS.[42] Indeed, Wyant Smith appears to have implicitly acknowledged an unauthorized transfer of control to Smith by

[32] *See WHDH, Inc*., Memorandum Opinion and Order, 17 FCC 2d 856, 863 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC,* 444 F.2d 841 (D.C. Cir. 1970*), cert. denied*, 403 U.S. 923 (1971*); Paxson Mgmt. Corp. & Lowell W. Paxson (Transferors) & CIG Media LLC (Transferee)*, Memorandum Opinion and Order, 22 FCC Rcd 22224, 22234, para. 28 (2007).

[33] *See Mission Broad., Inc., Nexstar Media Group, Inc.*, Notice of Apparent Liability for Forfeiture, FCC-24-34, 2024 WL 1327033 (2024) (*Mission Broad.)* at para 5.

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

[35] *See, e.g.*, *Hicks Broad. of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd 10662, 10677, para. 50 (1998) (control over any one of the areas of personnel, programming, and finances would be sufficient for a finding of de facto control); *Anabelle Savage, Chapter 7 Tr., Universal Broad., Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3665, 3670, n. 61 (MB 2010); and *Clear Channel Broad. Licenses Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14095, para. 38 (MB 2009).

[36] *See WQRZ, Inc.*, Decision, 22 FCC 1254, 1332, para. 51 (1957); *see also Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Order to Show Cause Why an Order of Revocation Should not be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, MB Docket No. 23-267, DA 23-678, 2023 WL 5197159 (MB Aug. 10, 2023) at para. 6.

[37] 47 U.S.C. § 310(d).

[38] 47 CFR § 73.3540(a).

[39] *See* Applications at Wyant Smith Declaration, ¶ 2, and KCCS, LLC Transfer of Control-Purchase Agreement Exhibit, 1.

[40] *See, supra* note 13.

[41] Applications at Amendment, para. B.

[42] We note that Smith's prepayment of 100 percent of the "sweat equity" services purchase is particularly troubling when considered with the other evidence indicating a surrender of control of Licensee by Wyant Smith. *See Solar Broad., Co., Inc*. Memorandum Opinion and Order, 17 FCC Rcd 5467, 5487, para. 74 (finding an 80% prepayment of the purchase price by the proposed assignee did not indicate an unauthorized transfer of control given the licensee's express retention of ultimate authority over programming, finances, and personnel in the parties' local marketing agreement).

agreeing to indemnify Smith "for any penalties assessed by the FCC or other costs (not including attorney fees) associated with executing the Purchase Agreement pursuant to its original terms and transferring ownership of the FCC Licensee and the Station[s] to the Buyer without prior FCC approval."[43]

11. The second unauthorized transfer of control apparently occurred in approximately Spring 2022 when it seems that Smith and her sisters began holding themselves out to the public as co-owners of the Stations. As discussed above, since at least April 2022 Smith and her sisters have held themselves out to the public as co-owners of KSLM(AM): 1) on the KSLM(AM) website;[44] 2) in social media posts for KSLM(AM);[45] and 3) in a June 24, 2022, news article.[46] Moreover, as stated above, Smith publicly declared that "[w]e changed the format [KSLM(AM)] to political news talk."[47] The Commission has opined that "regardless of what interest an entity or individual holds in a licensee, it may nonetheless be found to have exerted actual control of a station."[48] Here, the record is clear that on multiple occasions and formats, Smith and her sisters have publicly claimed to own and control KSLM(AM).[49] Accordingly, we find that two unauthorized transfers of control of Licensee apparently occurred. Below, we propose a forfeiture for these apparent violations of section 310(d) of the Act and section 73.3540(a) of the Rules.

12. *Proposed Forfeiture*. As noted, above, control of KCCS was apparently willfully transferred twice without prior Commission authorization in violation of section 310(d) of the Act and section 73.3540(a) of the Rules. Moreover, KCCS did not voluntarily on its own initiative fully disclose the unauthorized transfers of control or in response to the Bureaus repeated requests, over a two year period, for further information concerning the apparent unauthorized transfers of control.[50]

13. 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.[51] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[52] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[53] and the Commission has so interpreted the term in the section 503(b) context.[54]

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[43] Applications at Amendment, para. D.

[44] *See, supra* note 26.

[45] *See, supra* note 25. We note that the Commission has previously found that social media posts can provide probative evidence of apparent violations. *See e.g. Fabrice Polynice, Harold Sido and Veronise Sido,* Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7949, 7952, para. 10 (2017) ("A review of the public social media accounts of Mr. Polynice and Mr. Sido provides further evidence of their apparent violations.")

[46] *See, supra* note 27.

[47] *Id.*

[48] *Mission Broad*., FCC-24-34, 2024 WL 1327033 at para 5.

[49] As noted *supra* at page 4 and note 34, the Commission considers whether someone other than the authorized licensee holds themselves out to station staff and/or the public as controlling the station. Here, only Wyant Smith is authorized to control KCCS.

[50] *See, supra*, para 6.

[51] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

[52] 47 U.S.C. § 312(f)(1).

[53] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[54] *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).

14. The Commission's Forfeiture Policy Statement and section 1.80(b)(11)[55] of the Rules sets forth a base forfeiture of $8,000 for each unauthorized substantial transfer of control.[56] 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."[57]

15. In this case, we find that the base forfeiture amount of $8,000 for each of the two apparent unauthorized transfer of control is appropriate. Here, KCCS was not fully forthcoming in disclosing the apparent unauthorized transfers of control.[58] 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 total forfeiture in the amount of sixteen thousand dollars ($16,000) for the apparent violations of section 310(d) of the Act and section 73.3540(a) of the Rules.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that KCCS, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand dollars ($16,000) for its apparent willful and repeated violations of section 310(d) of the Communications Act of 1934, as amended, and section 73.3540(a) of the Commission's rules.[59]

17. **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,*** KCCS, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. 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),[60] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, KCCS, LLC, must send notice that payment has been made to Kim.Varner@fcc.gov** and **Olivia.Hill@fcc.gov**. Below are instructions that payors should follow based on the form of payment selected:[61]

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

[55] 47 CFR § 1.80(b)(11).

[56] *Id.* at Table 1.

[57] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

[58] *See, supra*, para 6.

[59] 47 U.S.C. § 310(d); 47 CFR § 73.3540(a).

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

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

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

- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/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.

19. 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, Kim Varner, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to Kim.Varner@fcc.gov and Olivia.Hill@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.[62]

  - 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.

20. 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);

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

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.[63]

21. Requests for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.[64] 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 **Kim.Varner@fcc.gov** and **Olivia.Hill@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.

22. **IT IS FURTHER ORDERED** that, pursuant to section 73.3526(e)(10) of the Commission's rules, 47 CFR § 73.3626(e)(10), a copy of this *NAL* and as otherwise required all related investigatory materials **SHALL BE RETAINED** in the above-captioned Station's online public inspection file until grant of the next license renewal application.

23. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KCCS, LLC, 3190 Lancaster Drive NE, Salem, OR 93705. A copy will also be set to Licensee's counsel Francisco Montero, Esq., Fletcher, Heald and Hildreth, P.L.C., 1300 N. 17th Street, Suite 1100, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

[64] *See* 47 CFR § 1.1914.

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

In the Matter of	)	
	)	
Promoting Investment in the 3550-3700 MHz Band	)	GN Docket No. 17-258
	)	
	)	

ORDER GRANTING EXTENSION OF TIME

Adopted: September 27, 2024 **Released: September 27, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In this Order, the Wireless Telecommunications Bureau (WTB) of the Federal Communications Commission (Commission or FCC) grants a joint motion filed by the Wireless Innovation Forum, The OnGo Alliance and WISPA – The Association for Broadband Without Boundaries (collectively, Joint Petitioners) seeking a 30-day extension of time to file comments and reply comments in the above-captioned proceeding.[1] For the reasons stated below, we find that a 30-day extension of time is warranted and extend the comment and reply comment dates accordingly.

2. On August 16, 2024, the Commission released a *Notice of Proposed Rulemaking and Declaratory Ruling* (NPRM) that sought comment on further improvements to the 3.5 GHz band.[2] Comments in response to the NPRM are due October 7, 2024, and reply comments are due November 5, 2024.[3]

3. In their motion, Joint Petitioners—representing approximately 1,200 member companies, including Spectrum Access System administrators, Environmental Sensor Capability (ESC) operators, Citizens Broadband Radio Service users, and Citizens Broadband Radio Service Device manufacturers—assert that the NPRM "raises significant and complex issues about the Citizens Broadband Radio Service ("CBRS") ecosystem that warrant detailed comments to build a robust record from those directly impacted."[4] The Joint Petitioners note that their members have deep expertise in the Citizens Broadband Radio Service and that their members appreciate the rare opportunity to provide well-informed feedback to the Commission on the rules governing the service.[5] To that end, the Joint Petitioners contend that, while they and their members have been working diligently to develop consensus positions since the general topics in the NPRM were publicly disclosed—and that they have conducted extensive in person and virtual outreach to their members—their comments, and the overall record in the proceeding, would

[1] *See* Joint Motion of The Wireless Innovation Forum, OnGo Alliance and WISPA for Extension of Time to File Comments and Reply Comments, GN Docket No. 17-258 (filed Sep. 19, 2024), https://www.fcc.gov/ecfs/document/109191539611233/1 (Joint Motion) (Joint Petitioners seek a 30-day extension of the comment and reply deadlines).

[2] *See Promoting Investment in the 3550-3700 MHz band,* GN Docket No. 17-258, Notice of Proposed Rulemaking and Declaratory Ruling (rel. Aug. 16, 2024) ("NPRM").

[3] Federal Communications Commission, Promoting Investment in the 3550-3700 MHz Band, 89 Fed. Reg. 72780 (Sep. 6, 2024).

[4] Joint Motion at 1.

[5] *Id*. at 3.

benefit significantly from additional time.[6] In addition, the Joint Petitioners assert that they need additional time to complete technical studies—which the Commission specifically requested in the NPRM—including an examination of the coexistence of offshore devices with ESCs, the impact of modified out of band emission limits on the Citizens Broadband Radio Service ecosystem, and the potential costs of indoor higher power Category A devices.[7] Joint Petitioners enumerate ten specific reasons unique to the NPRM supporting their extension request and argue that their need to seek input and consensus from their large and diverse memberships, and to address the myriad technical and logistical issues raised in the NPRM, warrants an extension of time to file comments and reply comments.[8]

4. As set forth in section 1.46 of the Commission's rules, the Commission does not routinely grant extensions of time for filing comments.[9] In this case, however, we find that Joint Petitioners have established that additional time is necessary to enable commenters to adequately assess highly technical data and to produce studies in response to the complex technical, legal, and policy issues presented in the NPRM. Given the importance of receiving robust input from all of Joint Petitioners' respective members on the questions raised in the NPRM, along with the Commission's stated desire for detailed technical analyses, we find there is good cause to extend the deadlines for comments and replies for a period of 30 days.

5. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.204, 0.331, and 1.46 of the Commission's rules, 47 CFR §§ 0.131, 0.204, 0.331, and 1.46, the Motion for Extension of Time to File Comments and Reply Comments filed by the Joint Petitioners is GRANTED.

6. IT IS FURTHER ORDERED that the dates to file comments and reply comments in this proceeding ARE EXTENDED to November 6, 2024, and December 5, 2024, respectively.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

[6] *Id.* at 1-5.

[7] *Id*. at 3.

[8] *See id*.

[9] 47 CFR § 1.46.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1011
Released: September 27, 2024

WTB AND PSHSB EXTEND FILING AND REGULATORY DEADLINES IN AREAS AFFECTED BY HURRICANE HELENE

On September 26, 2024, Hurricane Helene made landfall in Florida, causing serious damage to communications infrastructure.[1] In recognition of these effects and those to come, President Biden issued an emergency declaration for the State of Florida.[2] Pursuant to our authority to waive rules for good cause[3] and to alleviate any additional burden that may be caused by our filing requirements and regulatory deadlines, we hereby extend certain deadlines occurring from September 23, 2024, to October 23, 2024, for affected licensees and applicants in the affected areas.

For the purposes of the relief we grant today, we define "affected areas" as the State of Florida, and the Georgia, North Carolina, and South Carolina counties designated by the Federal Communications Commission's Disaster Information Reporting System (DIRS).[4] In this context, "affected" licensees and applicants include those licensees and applicants that operate facilities, or, in a significant manner essential to the business or public safety operation, rely on personnel, records, or financial institutions located in the affected areas to provide services or to conduct substantial business activities with the Commission.

(1) For affected licensees and applicants, we extend until October 24, 2024, any deadlines currently set within the period from September 23, 2024, to October 23, 2024, inclusive, with respect to Wireless Radio Service[5] applications, notifications, and reports pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules,

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[1] Press Release, FEMA, President Joseph R. Biden, Jr. Approves Emergency For Florida Declaration (Sept. 24, 2024), https://www.fema.gov/press-release/20240924/president-joseph-r-biden-jr-approves-emergency-declaration-florida.

[2] Press Release, The White House, President Joseph R. Biden, Jr. Approves Florida Emergency Declaration (Sept. 24, 2024), https://www.whitehouse.gov/briefing-room/presidential-actions/2024/09/24/president-joseph-r-biden-jr-approves-florida-emergency-declaration-8/.

[3] 47 CFR § 1.3. In light of the significant damage caused by this hurricane and the associated impact on affected licensees and applicants, we find that it would be unduly burdensome to require affected licensees and applicants to continue to meet the filing requirements and regulatory deadlines extended herein, and that good cause exists to grant this extension.

[4] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina*, DA 24-991, Public Notice (PSHSB Sept. 25, 2024).

[5] *Wireless Radio Services*. All radio services authorized in Parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of the Commission's rules, whether commercial, private, or public safety in nature.

including, but not limited to, filings regarding certain minor[6] license modifications, license renewals, and notifications of construction. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of Hurricane Helene.[7] extension requests, or to pay individual waiver fees.[8]

(2) For affected licensees and applicants, we extend until October 24, 2024 all construction deadlines and other regulatory deadlines currently set within the period from September 23, 2024, to October 23, 2024, inclusive, applicable to Wireless Radio Services pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane.[9] Pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.

Special Temporary Authority and Waiver Requests. We also waive Section 1.931(a) of the Commission's rules through October 23, 2024, to allow the filing of STA requests for Wireless Radio Services in manners other than electronically on FCC Form 601, *e.g.*, by requesting STAs by telephone call to Commission staff.[10] Further, because the President has issued an emergency declaration for the affected region, all STA filings by affected licensees and applicants related to Hurricane Helene will be considered "emergency filings" pursuant to Section 1.915(b) of the Commission's rules[11] and will be processed as expeditiously as possible. Affected licensees and applicants must include a certification that the STA or waiver request is in response to Hurricane Helene. To file STA and waiver requests via email, or to request an STA orally, licensees and applicants may contact the following personnel:

- For Wireless Telecommunications Bureau Licensees and Applicants:
    - Parts 22, 24, 27 (excluding 600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service), Keith Harper, 202-418-2759, Keith.Harper@fcc.gov.
    - Parts 80, 87, 90 (excluding Public Safety), 95, and 97, Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov.

[6] *See* 47 CFR § 1.947(b). We waive the requirement to notify the Commission within 30 days of making a minor modification.

[7] To allow the Wireless Telecommunications Bureau (WTB) and Public Safety and Homeland Security Bureau (PSHSB) to process filings submitted through the Universal Licensing System (ULS) as expeditiously as possible, an "Attachment Type" has been created in ULS called "Hurricane/Wildfire Relief." This Attachment Type must be used to upload and attach to a filing a certification that states, "under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane." To provide the required certification, licensees and applicants should upload a file with the certification, select Attachment Type "Hurricane/Wildfire Relief," and enter "Hurricane Relief Certification" in the File Description field on the Attachment Screen. Following this process will allow you to submit a filing without paying waiver fees. Normal application fees still apply.

[8] The FCC does not assess filing fees for Public Safety applicants and licensees.

[9] *See supra* note 7 for instructions to file this certification.

[10] 47 CFR § 1.931(a).

[11] *Id.* § 1.915(b).

- Parts 27 (600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service); Part 30; Part 74 (excluding Subparts G and L); and Part 101 (excluding Public Safety): Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov.
- For more information and instructions for filing emergency STA and waiver requests with the Wireless Telecommunications Bureau, please consult the WTB Special Temporary Authority and Waiver Request Filing Guide, available at https://www.fcc.gov/research-reports/guides/wtb-special-temporary-authority-and-waiver-request-filing-guide.

- For Public Safety and Homeland Security Bureau Licensees and Applicants:
  - Parts 90 & 101 (Public Safety): Tracy Simmons, (717) 338-2657, Tracy.Simmons@fcc.gov. In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STAs can call the FCC's Operation Center, which is open 24 hours a day, 7 days a week, at (202) 418-1122 or by email at FCCOPS@fcc.gov.

Operation During Emergencies. We remind licensees that Sections 22.307, 90.407, and 101.205 of the Commission's rules address operation during periods of emergency for licensees authorized under these rule parts.[12] These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

We also remind applicants for Antenna Structure Registration (ASR) that facilities meeting the criteria for the replacement tower exception or temporary tower exception under the Commission's National Environmental Policy Act rules do not have to complete the environmental notification process prior to completing their ASR applications.[13] For facilities not subject to an exception, the Commission may waive or postpone the environmental notification process at the request of the applicant and upon an appropriate showing of an emergency situation.[14] Requests to waive or postpone the environmental notification process may be submitted with ASR applications by completing the waiver question in the ASR system to indicate that the applicant is requesting a waiver of the Commission's rules for environmental notice, and attaching a request for waiver that includes a showing of the emergency basis for the request, e.g., that the proposed tower will be used to restore service in an area affected by Hurricane Helene.

[12] *Id.* §§ 22.307, 90.407, 101.205.

[13] *Id.* § 17.4(c)(1)(iv), (c)(1)(vii).

[14] *See National Environmental Policy Act Compliance for Proposed Tower Registrations*, *Effects of Communications Towers on Migratory Birds*, WT Dockets Nos. 08-61, 03-187, Order on Remand, 26 FCC Rcd 16700, 16717, para. 43 n.117 (2011).

Priority Review by WTB and PSHSB. Finally, we remind affected licensees and applicants that they can also file waiver requests for relief not covered by the Public Notice. To facilitate the rapid restoration of communications infrastructure and services, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau will give priority to the review of waiver filings by affected licensees and applicants related to Hurricane Helene.

By the Chief, Wireless Telecommunications Bureau and the Chief, Public Safety and Homeland Security Bureau.

-FCC-

PUBLIC NOTICE

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

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

DA 24-1012
September 30, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 12 (IDAHO) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES TO HOLD MEETINGS

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

The Region 12 (Idaho) Regional Planning Committees (RPCs) will hold a joint 700 MHz and 800 MHz meeting on Thursday, October 10, 2024, 10:00 am, at the Kootenai County Fire and Rescue 5271 E. Seltice Way, Post Falls, ID 83854. Please note: The Idaho State Radio Users Group (ISRUG) meeting will immediately follow.

The agenda for the 700 MHz and 800 MHz RPC meeting includes:

- New Spectrum Requests
- License Modifications

The Region 12 joint 700 MHz and 800 MHz RPC meeting is open to the public. It is essential that public safety agencies in all areas of government, including state, municipality, county, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's rules, 47 CFR § 90.523, be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to participate and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 12 should plan to participate. For further information, please contact:

Karl Rudorf
Idaho 700 MHz Public Safety Radio Network Administrator
Idaho Region 12 RPC Chairman
945 E. Pine Ave.
Meridian, Idaho 83642
(208) 577-3618 / (208) 859-8972
krudorf@adacounty.id.gov

- FCC -

PUBLIC NOTICE

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 24-1013
September 30, 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, October 24, 2024. Beginning at 10:00 am, the Region 21 800 MHz RPC meeting will convene at the Zehnder's Restaurant, 730 S Main Street, Frankenmuth, MI 48734.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – September 12, 2024 meeting
- Correspondence
- Review of Applications
  - Old Applications
    - Oakland County – Amend WRJQ682 and WRJC392
    - Change site 3 from Oakland Heights to Bald Mountain
  - New Applications
- 800 MHz Subcommittee Reports
  - Interoperable Communication Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Committee
- Old Business
  - Website
- New Business
  - 2025 Meeting dates/locations
- Next meeting: TBD
- 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 – September 12, 2024 meeting

[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).

- Correspondence
- Public Hearing on 700 MHz Plan
- Review of Applications
  - Old Applications
    - Oakland County – Amend WRJQ682 and WRJC391
    - Change Location 3 from Oakland Heights to Bald Mountain
  - New Applications
    - State of MI – Other
- 700 MHz Subcommittee Reports
  - Interoperable Communications Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
  - 2025 Meeting dates/locations
- Next meeting: TBD
- 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

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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 24-1014
September 30, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 54 (SOUTHERN LAKE MICHIGAN) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES TO HOLD MEETINGS

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

The Region 54 (Southern Lake Michigan)[1] 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two virtual meetings via Microsoft Teams on Wednesday, October 30, 2024 at 9:00 am (Central Time). The deadline for new applications to be filed for the Fall meeting is October 1, 2024. Applications can be submitted at any time prior to that date using www.capradap.org.

The agenda for the 800 MHz RPC meeting includes:

- Old Business
  - Applications
    - County of Walworth
  - For the good of the order
- New Business
  - Applications
    - Village of Melrose Park
    - State of Michigan
  - For the good of the order

The 700 MHz RPC meeting will convene immediately following the 800 MHz RPC meeting.

The agenda for the 700 MHz meeting includes:

- Old Business
  - Applications
  - For the good of the order
- New Business
  - Applications
    - County of Kane
    - City of Aurora
    - City of Joliet
  - For the good of the order

[1] The Region 54 (Southern Lake Michigan) 700 MHz RPC encompasses counties in three states bordering Lake Michigan: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will, and Kankakee Counties, Illinois; Lake, LaPorte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkhart Counties, Indiana; and Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Rock, Walworth, Washington, and Waukesha Counties, Wisconsin. The Region 54 (Southern Lake Michigan) 800 MHz NPSPAC RPC includes the Michigan counties of Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berrien, Cass, and St. Joseph, in addition to all of the above-mentioned Illinois, Indiana and Wisconsin counties.

The Region 54 Regional Planning Committee meetings are open to the public. All eligible public safety providers whose sole or principal purpose is to protect the safety of life, health, or property in the Southern Lake Michigan area may utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's Rules be represented to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not conversant with telecommunications technology should ensure that their respective agencies are represented by suitably conversant staff.

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 54 are encouraged to attend. For further information and Teams invitation, please contact Ned W. Jacklin via email at nedr54@sbcglobal.net.

Carl Guse
Chairperson, Region 54
Phone: 920-210-4455
Email: crguse@gmail.com

Ned W. Jacklin
Secretary, Region 54
Phone: 815-252-2564
nedr54@sbcglobal.net

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PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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Internet: www.fcc.gov
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DA 24-1015
Released: September 27, 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 HELENE

The Federal Communications Commission (Commission) is expanding its disaster data collection to include counties in South Carolina, Tennessee, and Virginia.

On September 25, 2024, the Public Safety and Homeland Security Bureau (PSHSB) of the Commission, in coordination with the states of Florida, Georgia, North Carolina, and South Carolina, the Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Emergency Management Agency (FEMA), announced the activation of the Disaster Information Reporting System (DIRS) in response to Hurricane Helene.[1] The states of South Carolina, Tennessee, and Virginia have asked the Commission to expand the data collection to include specified counties in those states with initial reports due on Saturday, September 28, 2024.

ADDITIONAL COUNTIES FOR DIRS ACTIVATION INCLUDE:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lancaster, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Sevier, Unicoi, and Washington.

Virginia: Alleghany, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Franklin, Giles, Grayson, Highland, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

DIRS is a voluntary, 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 above 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

[1] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina,* Public Notice, DA 24-991 (rel. Sep. 25, 2024) ("*Hurricane Helene DIRS and MDRI Activation PN*").

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 HELENE. Communications providers are advised that for providers that participate in DIRS, PSHSB hereby waives the separate Network Outage Reporting System (NORS) obligations for the duration of the DIRS activation with respect to outages in the geographic areas where DIRS has been activated. Providers that participate in DIRS remain required, where applicable, to report incidents in NORS that have reportable effects that fall outside the DIRS activation areas. **Reports are requested at 9:00 a.m. (EDT) on September 28, 2024 and every day after that by 9:00 a.m. (EDT) until DIRS is deactivated.**

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

MDRI EXPANDED TO COUNTIES IN SOUTH CAROLINA, TENNESSEE, AND VIRGINIA

With the expansion of the DIRS activation to include counties in South Carolina, Tennessee, and Virginia, 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, Tennessee, and Virginia for which DIRS is activated.[2]

ADDITIONAL COUNTIES FOR MDRI ACTIVATION INCLUDE:

South Carolina: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lancaster, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Sevier, Unicoi, and Washington.

Virginia: Alleghany, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Franklin, Giles, Grayson, Highland, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

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

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[2] *See Hurricane Helene DIRS and MDRI Activation PN* at 1.

[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).

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 Hurricane Helene 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 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, Brevard, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

Georgia: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

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[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.

South Carolina: Abbeville, Anderson, Cherokee, Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg, Union, and York..[7]

Please continue to provide information for the impacted areas 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
Juan Chapa (202) 418-0431, juan.chapa@fcc.gov
Julia Tu (202) 418-0731, julia.tu@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 Helene, please go to www.fcc.gov/helene

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[7] *See Hurricane Helene DIRS and MDRI Activation PN* at 1.

PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
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Internet: http://www.fcc.gov

DA 24-1016
Released: September 30, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF QUALSTAR COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-295

Comments Due: October 14, 2024
Reply Comments Due: October 21, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by QualStar Communications, Inc. (QualStar) (Licensee) and Defiance Holdings, LLC (Defiance) (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 to Ayerville Telephone Company (Ayersville) and Arthur Mutual Telephone Company (Arthur) of the indirect equity interest held by Sherwood Mutual Telephone Association, Inc. (Sherwood) in QualStar, the blanket domestic section 214 authorization holder.[2]

QualStar, an Ohio corporation operating as a competitive local exchange carrier (LEC), provides telecommunications services to small business and residential customers in Ohio.[3] The sole owner of QualStar is Defiance.[4]

Defiance, an Ohio limited liability company, is currently owned by Ayersville, Arthur and Sherwood (collectively, the Affiliates), all Ohio corporations operating as incumbent LECs, each with a single exchange.[5] Each Affiliate directly owns one-third (33.33%) of Defiance, and in turn, indirectly owns one-third (33%) of QualStar.[6] Defiance, through the Affiliates, provides local exchange services

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

[2] Domestic Section 214 Application for the Transfer of Control of QualStar Communications, Inc. Filed by Defiance Holdings, LLC, WC Docket No. 24-295 (filed September 17, 2024) (Application). Applicants filed a supplement to the Application on September 25, 2024. Letter from Stephen E. Coran, Counsel to QualStar Communications, Inc. and Defiance Holdings, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-295 (filed Sept. 5, 2024) (Supplement). Defiance also filed an application for the transfer of control of authorizations associated with the provision of wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 2

[4] *Id*.

[5] *Id*. 2; Supplement at 2.

[6] Application at 2.

to residential and small to medium size business customers contiguous to Ayersville, Ohio; Arthur, Ohio; and Sherwood, Ohio.[7] Also through the Affiliates, Defiance wholly-owns MetaLINK, an Ohio corporation that holds wireless licenses to provide internet access, voice, and related services to residences and businesses.[8]

Applicants assert that pursuant to the terms of the proposed transaction, on September 16, 2024, Defiance and the Affiliates entered into a Membership Interest Redemption Agreement whereby Sherwood agreed to redeem its one-third membership interests in Defiance, resulting in Ayersville and Authur each owning fifty percent (50%) of Defiance and, indirectly, fifty percent (50%) of QualStar upon consummation of the transaction.[9]

Applicants assert that a grant of the application would serve the public interest, convenience, and necessity and request streamlined processing.[10] We accept the Application for streamlined processing under section 63.03(b)(2)(ii) of the Commission's rules.[11]

Domestic Section 214 Applications Filed for the
Transfer of Control of QualStar Communications, Inc., WC Docket No. 24-295 (filed September 17, 2024).

GENERAL INFORMATION

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

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, interested parties must file comments using the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs.

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

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

1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov;

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

[8] Supplement at 2.

[9] Application at 3.

[10] *Id*. at 1-2, 4-7.

[11] 47 CFR § 63.03(b)(2)(ii).

3) Nadja Sodos-Wallace, Broadband Division, Wireless Telecommunications Bureau, nadja.sodoswallace@fcc.gov;

4) Halie Peacher, Mobility Division, Wireless Telecommunications Bureau, halie.peacher@fcc.gov; and

5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[12] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

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[12] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

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DA 24-1017
Released: September 30, 2024

CALENDAR OF COMPETITIVE BIDDING SYSTEMS FOR FISCAL YEAR 2025

Each year, the Federal Communication Commission's Office of Economics and Analytics (OEA) publishes its calendar of spectrum auctions that it anticipates will commence over the course of the coming year. Specifically, section 309(j)(18) of the Communications Act of 1934, as amended, requires the Commission to make publicly available an estimate of what systems of competitive bidding for licenses or permits may be initiated during the upcoming 12-month period.[1] With specified exceptions, the Commission's authority to grant licenses or permits through systems of competitive bidding expired on March 9, 2023.[2] As discussed below, OEA does not currently have any systems of competitive bidding pursuant to these exceptions on its calendar for Fiscal Year (FY) 2025. Absent Congressional action, the Commission does not have authority to initiate any other systems of competitive bidding for spectrum in FY 2025.

One specified exception to the expiration of the Commission's authority applies to the 3.1–3.45 GHz Band, which was identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act for potential licensing through a system of competitive bidding to begin no earlier than November 30, 2024. Congress directed the Department of Defense (DoD) to study the 3.1–3.45 GHz band in order to identify spectrum for reallocation for shared use and auction.[3] Based on the DoD's study, the Secretary of Commerce, in coordination with the Secretary of Defense, the Director of the Office of the Science and Technology Policy, and relevant congressional committees will submit a report to the President and the Commission identifying the spectrum in the band that could be made available on a shared basis between Federal and non-Federal commercial users.[4] After the report is received, and no earlier than November 30, 2024, the Commission, in consultation with the Assistant Secretary of Commerce for Communications and Information, will begin a system of competitive bidding to grant

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[1] 47 U.S.C. § 309(j)(18).

[2] 47 U.S.C. § 309(j)(11) ("The authority of the Commission to grant a license or permit under this subsection shall expire March 9, 2023, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021."); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 5232, § 901 (2022).

[3] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 90008(b)(1)(A) (2021) (codified at 47 U.S.C. § 921 note).

[4] Infrastructure Investment and Jobs Act § 90008(b)(2)(A). Infrastructure Investment and Jobs Act § 90008(b)(2)(A). The National Spectrum Strategy notes that "DoD determined that sharing is feasible if certain advanced interference-mitigations features and a coordination framework to facilitate spectrum sharing are put in place. The Departments of Commerce and Defense will co-lead any follow-on studies to the Emerging Mid-band Radar Spectrum Study (EMBRSS) that focus on future use of the 3.1-3.45 GHz band." National Telecommunications and Information Administration, *National Spectrum Strategy* at 6 (November 13, 2023) https://www.ntia.gov/sites/default/files/publications/national_spectrum_strategy_final.pdf (*National Spectrum Strategy*).

licenses for the spectrum identified in the report.[5] Given that the spectrum is yet to be identified and is subject to ongoing study as part of the National Spectrum Strategy,[6] OEA estimates that a system of competitive bidding for this spectrum would not be initiated within FY 2025.

The Commission has several active proceedings in which it is considering whether and how to enable sharing or repurposing of bands, potentially creating opportunities for spectrum auctions beyond FY 2025. For example, in May 2023 the Commission adopted a notice of proposed rulemaking in which it sought comment on service rules for flexible use licenses in the 550 megahertz of the 12.7–13.25 MHz band.[7] Additionally, the Commission continues to examine for potential re-auction, subject to any limits currently imposed by the lapse in its statutory spectrum auction authority, its inventory of licenses in services well-suited for 5G that were previously offered at auction, such as 600 MHz and AWS-3.[8]

– FCC –

[5] *Id.* § 90008(b)(3).

[6] *See National Spectrum Strategy* at 6 (noting that the 3.1-3.45 GHz band warrants additional study in the near term); *see also* National Telecommunications and Information Administration, *National Spectrum Strategy Implementation Plan*, appx. at 6 (Mar. 12, 2024) https://www.ntia.gov/sites/default/files/publications/national-spectrum-strategy-implementation-plan.pdf (identifying target dates of December 2024 for release of a Final Project Schedule and October 2026 for release of the Final Report).

[7] *Expanding Flexible Use of the 12.2-12.7 GHz Band; Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, WT Docket No. 20-443, GN Docket No. 22-352, Order, Report and Order, Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking, FCC 23-36, at 34-68, paras. 58-142 (May 19, 2023).

[8] *See Wireless Telecommunications Bureau Seeks Comment on Ways to Facilitate Access to Currently Unassigned Auction Inventory Spectrum for Wireless Radio Services in Light of the Ongoing Lapse of Auction Authority*, WT Docket No. 24-72, Public Notice, DA 24-215 (WTB Mar. 7, 2024) (seeking comment on alternative mechanisms the Commission could use to make inventory of currently unassigned spectrum available for public use in the absence of auction authority).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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Internet: https://www.fcc.gov

DA 24-1018
Released: September 30, 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) (*SCRP 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]

(Continued from previous page)
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); *SCRP 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 SCRP 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 must specify both the specific grounds for the request and the underlying facts and circumstances on which the recipient relies in asserting those grounds. The Commission directed the Bureau to review individual extension requests on a case-by-case basis and to consider all factors when evaluating the request.[12] To this end, the facts and circumstances in an individual request should include the specific obstacles faced by the recipient, how they affected the recipient's ability to meet its term deadline, why the inability to meet the deadline exists through no fault of the recipient, and steps taken by the recipient to mitigate the impacts of the obstacles as it works towards meeting its removal, replacement, and disposal obligations. Recipients should also explain whether they expect to meet their new deadline if the Bureau grants their extension request. Consistent with rule 1.50004(h)(2), which permits the Bureau to grant more than one extension request "if circumstances warrant,"[13] recipients making a second or subsequent extension request should ensure that the facts and circumstances described cover the time period since their prior extension request was made and explain progress made since that request. 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.[14] 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."[15]

Consistent with the Commission's goal of streamlining its internal review processes,[16] and further pursuant to our delegated authority,[17] we announced in our *January 2024 Streamlined Resolution Public*

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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] *2021 Supply Chain Order*, 36 FCC Rcd at 11998, para. 99.

[13] 47 CFR § 1.50004(h)(2).

[14] 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).

[15] 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).

[16] *See Report on FCC Process Reform,* GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) (*Process Reform Report*).

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.[18] Accordingly, we hereby grant the pending petitions listed below for an extension of a recipient's term to remove, replace, and dispose of its covered equipment.[19]

Recipient – James Valley Cooperative Telephone Company, SCRP0001105

> **Grounds for individual term extension** – James Valley Cooperative Telephone Company (James Valley) requests a third 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).[20] James Valley asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its October 8, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding. James Valley states that, since the Bureau granted its second extension request,[21] its "limited financial resources" have resulted in vendor work being performed on "slower . . . terms than normal" and that this has "resulted in significant [project] delays."[22] James Valley explains that it has attempted to mitigate such delays by "repurpos[ing] its reserve funds" but that these efforts are not sufficient for it to meet its program obligations within its currently assigned term.[23] Despite these issues, James Valley reports progress, noting that it has "complet[ed] the replacement and destruction of [the] customer premise modems" described in its last extension request and that it has made additional progress towards the "destruction of . . . banned equipment."[24] The Bureau finds James Valley's showing persuasive and that its situation is consistent with the situation of other recipients that have been

(Continued from previous page)

[17] *See* 47 CFR §§ 0.91, 0.291, 1.50004(h)(2).

[18] *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 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).

[19] 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.

[20] *See* Supplemental Request of James Valley for Extension of Time, WC Docket No. 18-89 (filed Sept. 9, 2024) (Supplemental Request of James Valley); Request of James Valley for Extension of Time, WC Docket No. 18-89 (filed Aug. 22, 2024).

[21] *Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 24-191, at 4-5 (WCB Feb. 29, 2024) (February 2024 Streamlined Resolution of Requests Public Notice).

[22] Supplemental Request of James Valley at 3.

[23] *Id.*

[24] *Id.*

granted extensions on similar grounds of the lack of full funding,[25] and accordingly grants the requested extension through April 8, 2025.

New RRD term expiration date – James Valley'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 October 8, 2024 to April 8, 2025.

Recipient – Panhandle Telecommunication Systems Inc, SCRP0001033

Grounds for individual term extension – Panhandle Telecommunication Systems Inc (PTSI) 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).[26] PTSI asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its October 18, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding. PTSI states that, since the Bureau granted its first extension request,[27] the lack of funding has become a "major impediment" that has prevented it from "complet[ing] [its] project by [its] current RRD term."[28] PTSI explains that it has partially mitigated these delays by using other "financial resources" to complete work and moving "the bulk of [its] drive testing and optimization" efforts to in-house staff, but that these efforts have also created project delays.[29] Despite these issues, PTSI reports that it has now "complet[ed] [the] destruction process" and expects to complete its outstanding "network optimization" work if its extension request is granted.[30] The Bureau finds PTSI'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,[31] and accordingly grants the requested extension through April 18, 2025.

New RRD term expiration date – PTSI'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 October 18, 2024 to April 18, 2025.

Recipient – Southern Ohio Communication Services Inc, SCRP0001019

Grounds for individual term extension – Southern Ohio Communication Services Inc (SOCS) 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).[32] SOCS asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its October 6, 2024 deadline has, through no fault of its own, been materially affected by supply

[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.

[26] *See* Supplemental Request of Panhandle for Extension of Time, WC Docket No. 18-89 (filed Sept. 19, 2024) (Supplemental Request of Panhandle); Request of Panhandle for Extension of Time, WC Docket No. 18-89 (filed Aug. 21, 2024).

[27] February 2024 Streamlined Resolution of Requests Public Notice at 5-6.

[28] Supplemental Request of Panhandle at 1.

[29] *Id.*

[30] *Id.* at 2.

[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.

[32] *See* Request of SOCS for Extension of Time, WC Docket No. 18-89 (filed Sept. 12, 2024) (Request of SOCS).

chain issues. SOCS states that, since the Bureau granted its first extension request,[33] it has removed all covered equipment from its network except for "one ZTE router" and it is waiting for a vendor to "schedule[] a time to install" a new router in place of the ZTE router.[34] SOCS reports that it has already purchased the needed replacement equipment.[35] SOCS requests the present extension to allow its vendor to perform the needed work, after which SOCS expects to be able to complete its remaining disposal obligations.[36] The Bureau finds SOCS's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of supply chain issues,[37] and accordingly grants the requested extension through April 6, 2025.

New RRD term expiration date – SOCS'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 October 6, 2024 to April 6, 2025.

Recipient – Stealth Communications, SCRP0001138

Grounds for individual term extension – Stealth Communications (Stealth) requests a third six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) in the above-identified application.[38] Stealth asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its September 29, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues. Stealth states that, since the Bureau granted its second extension request,[39] it continues to be impacted by delays related to the late receipt of required equipment and in collaborating with an external vendor on key project milestones.[40] Stealth notes that, through its expedition efforts, it has now mostly mitigated the sources of these delays and is dealing with residual (rather than ongoing) delays.[41] Stealth reports that it has procured significantly more of the required equipment than it had obtained at the time of its last request, and that the amount of outstanding equipment should not prevent its overall progress in meeting it program obligations.[42] Stealth estimates that that it will be able to complete its program obligations if its extension request is granted.[43] The Bureau finds Stealth's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted

[33] *Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 24-407, at 10 (WCB Apr. 30, 2024).

[34] Request of SOCS at 1-2.

[35] *Id.* at 2.

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

[37] *See, e.g., 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.

[38] *See* Request of Stealth for Extension of Time, WC Docket No. 18-89 (filed Aug. 30, 2024) (Request of Stealth).

[39] February 2024 Streamlined Resolution of Requests Public Notice at 6.

[40] Request of Stealth at 2-3.

[41] *Id.*

[42] *Id.* at 2.

[43] *Id.* at 3.

extensions on similar grounds of supply chain issues,[44] and accordingly grants the requested extension.

New RRD term expiration date – Stealth'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 September 29, 2024 to March 29, 2025.

Recipient – WorldCell Solutions, LLC, SCRP0001137

Grounds for individual term extension – WorldCell Solutions, LLC (WorldCell) requests a second term extension, of three and a half months, of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).[45] WorldCell asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its September 30, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues. WorldCell states that its vendor has run into "unforeseen delays . . . including network configurations, software updates, integrations with legacy systems, and issues in hardware delivery," and that even after these delays are overcome WorldCell will need to conduct "proper testing and validations before the project goes live."[46] WorldCell adds that despite its consistent communication with the vendor and efforts to mitigate delays, the vendor has informed WorldCell that it will need additional time to meet the project requirements.[47] For these reasons, WorldCell asserts that it is unable to meet its current deadline, and requests an extension to January 15, 2025.[48] The Bureau finds WorldCell's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds of supply chain issues,[49] and accordingly grants the requested extension.

New RRD term expiration date – WorldCell'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 September 30, 2024 to January 15, 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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[44] *See, e.g., 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.

[45] *See* Request of WorldCell Solutions, LLC for Extension of Time, WC Docket No. 18-89 (filed Sept. 26, 2024) (Request of WorldCell).

[46] *Id*.

[47] *Id*.

[48] *Id*.

[49] *See, e.g., 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.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
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DA 24-1019
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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PREVIOUSLY GRANTED STIR/SHAKEN IMPLEMENTATION EXTENSIONS PURSUANT TO SECTION 64.6304(F) OF THE COMMISSION'S RULES

WC Docket No. 17-97

Comments Due: October 21, 2024
Reply Comments Due: November 5, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment as part of an annual reevaluation of extensions that the Commission has granted on the basis of undue hardship for implementation of the STIR/SHAKEN caller ID authentication framework.[1] Specifically, the Bureau seeks comment on the two remaining extensions under section 64.6304 of the Commission's rules: the first for small voice service providers that originate calls via satellite using North American Numbering Plan (NANP) resources,[2] and the second for providers that are unable to obtain the Service Provider Code (SPC) token necessary to participate in the STIR/SHAKEN framework.[3]

I. BACKGROUND

When Congress in the TRACED Act directed the Commission to require that voice service providers implement STIR/SHAKEN,[4] it also instructed the Commission to create certain extensions of the implementation deadline. The TRACED Act required the Commission to "assess any burdens or barriers" to the implementation of STIR/SHAKEN that certain providers might face, and "upon a public finding of undue hardship," authorized the Commission to delay STIR/SHAKEN implementation deadlines "for a reasonable period of time."[5] Initially, the Commission performed an assessment and granted three categorical implementation extensions on the basis of undue hardship to: (1) small voice

[1] 47 CFR § 64.6304(f) (requiring that the Bureau "in conjunction with an assessment of burdens and barriers to implementation of caller identification authentication technology, annually review the scope" of all STIR/SHAKEN implementation extensions previously granted by the Commission pursuant to the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)); *see* TRACED Act, Pub. L. No. 116-105, § 4(b)(5)(F), 133 Stat. 3274, 3279 (2019) (codified in 47 U.S.C. § 227b); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1896-97, paras. 71-73 (2020) (*Second Caller ID Authentication Report and Order*).

[2] 47 CFR § 64.6304(a)(1)(iii).

[3] 47 CFR § 64.6304(b).

[4] TRACED Act § 4(b)(1). The STIR/SHAKEN authentication framework is defined by Congress and the Commission as "the secure telephone identity revisited and signature-based handling of asserted information using tokens standards." TRACED Act § 4(a)(1); 47 CFR § 64.6300(m).

[5] 4 TRACED Act § 4(b)(5); *see* 47 CFR § 64.6304.

service providers with 100,000 or fewer voice subscriber lines; (2) providers unable to obtain the SPC token necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214 discontinuance.[6]

The TRACED Act further requires the Commission to assess the burdens of and barriers to implementation of STIR/SHAKEN "as appropriate" after its initial assessment,[7] and it directs the Commission to annually reevaluate and potentially revise any extension granted on the basis of undue hardship.[8] As part of this annual reevaluation, Congress instructed the Commission to issue a public notice to address "why such delay of compliance remains necessary" and "when the Commission expects to achieve the goal of full participation," in the caller ID authentication framework.[9]

To comply with the TRACED Act, the Commission directed the Bureau to annually conduct an assessment of the burdens and barriers to the implementation of caller identification authentication technology, which includes revaluating the extensions granted due to undue hardship and revising or extending them as necessary.[10] As part of this assessment, the Bureau is permitted to lengthen extensions to which providers are already subject, but it cannot terminate an extension prior to the original end date or grant a new extension to any provider or service that is not already subject to one.[11] If the Bureau decides to lengthen a granted extension, it can decrease, but not expand, the scope of entities that are entitled to such an extension.[12]

As of September 2024, two of the initial extensions that Commission granted on the basis of undue hardship have ended, and the Commission has added one additional extension. The STIR/SHAKEN implementation extensions for services scheduled for section 214 discontinuance ended on June 30, 2022,[13] 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.[14] In March 2023, the

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[6] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-83, paras. 39-51. Pursuant to the TRACED Act, voice service providers also have 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. Because this extension was not granted on the basis of undue hardship, we do not address it further in this Public Notice. *See* TRACED Act § 4(b)(5)(F).

[7] TRACED Act § 4(b)(5)(A).

[8] TRACED Act § 4(b)(5)(F).

[9] TRACED Act § 4(b)(5)(F)(iii).

[10] 47 CFR § 64.6304(f); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1896, paras. 71-72. *See Wireline Competition Bureau Reevaluates STIR/SHAKEN Extensions Pursuant to Section 4(b)(5) of the TRACED Act*, WC Docket No. 17-97, Public Notice, 36 FCC Rcd 17748, 17749-52 (WCB Dec. 16, 2021) (*First Reevaluation of STIR/SHAKEN Extensions Public Notice*); *Wireline Competition Bureau Performs Required Evaluation Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, 37 FCC Rcd 14876, 14878-81 (WCB Dec. 16, 2022) (*Second Reevaluation of STIR/SHAKEN Extensions Public Notice*); *Wireline Competition Bureau Performs Required Evaluation Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, DA 23-1157, at 3-7 (WCB Dec. 15, 2023) (*Third Reevaluation of STIR/SHAKEN Extensions Public Notice*).

[11] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1896, paras. 71-72.

[12] *Id.* at 1896, paras. 71-72.

[13] *See* 47 CFR § 64.6304(c) (providing a one-year implementation extension until June 30, 2022, for services scheduled for 214 discontinuance).

[14] *See id.* § 64.6304(a)(1)(i) (limiting the extension for non-facilities-based small voice service providers to June 30, 2022). The Commission initially granted a two-year extension until June 30, 2023, for all small voice service providers to implement STIR/SHAKEN. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-

(continued….)

Commission granted an indefinite STIR/SHAKEN implementation extension on the basis of undue hardship to small voice service providers that originate calls via satellite using NANP numbers,[15] noting that the Commission would reevaluate the extension annually as required by the TRACED Act.[16]

II. DISCUSSION

Pursuant to the TRACED Act and section 64.6304(f) of the Commission's rules, we seek comment to enable our annual reevaluation of the remaining STIR/SHAKEN implementation extensions—for small satellite voice service providers originating calls with NANP numbers and for providers unable to obtain a SPC token—granted on the basis of undue hardship. When considering whether a hardship is "undue" under the TRACED Act, and whether an extension is for a "reasonable amount of time," the Commission has found it appropriate to balance the hardship of compliance due to "the burdens and barriers to implementation" faced by a provider or class of providers with the benefit to the public of implementing STIR/SHAKEN expeditiously.[17] With that in mind, we seek comment on the extension for small satellite providers originating calls using NANP numbers and for providers that cannot obtain an SPC token.

Extension for Small Satellite Providers Originating Calls Using NANP Numbers. First, we seek comment on the Commission's extension for small voice service providers that originate calls via satellite using NANP numbers. In the *Sixth Caller ID Authentication Report and Order*, the Commission concluded that an indefinite implementation extension is appropriate for such providers because "satellite service costs make the high-volume calling necessary for robocallers uneconomical," there was "little evidence that satellite providers or their users are responsible for illegal robocalls," and the number of satellite subscribers using NANP resources was "miniscule."[18] The Commission concluded that the balance of benefits and burdens counseled "against requiring such providers to implement" STIR/SHAKEN.[19] During the Bureau's annual assessment in 2023, it found that this extension remained necessary for the reasons the Commission found in the *Sixth Caller ID Authentication Report and Order*; therefore, the Bureau recommend no modifications at that time.[20]

We seek comment on the benefits, burdens, and barriers to STIR/SHAKEN implementation by small voice service satellite providers that originate calls via satellite using NANP numbers. Have these burdens, barriers, and benefits changed since the *Sixth Caller ID Authentication Report and Order* and, if so, how? Have any of underlying factors that the Commission used to draw its conclusions regarding small voice service satellite providers changed since the extension was adopted? Have any abuses occurred due to this extension, or are any abuses likely to result if the extension is continued? What

(Continued from previous page)
82, paras. 40-48. Subsequently, the Commission shortened this extension by a year for non-facilities-based small service providers to June 30, 2022, based on overwhelming record support and available evidence showing that this subset of small voice service providers were originating a large and disproportionate amount of robocalls. *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, 36 FCC Rcd 17840, 17844, para. 9 (2021) (*Small Provider Order*).

[15] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 2573, 2614-15, paras. 79-82 (2023) (*Sixth Caller ID Authentication Order and Further Notice*). Because the Commission concluded that satellite providers originating calls using non-NANP numbers are not "voice service providers" within the meaning of the TRACED Act, it did not reach the question of whether a STIR/SHAKEN implementation extension was necessary for such providers. *Id.* at 2613-14, para. 78.

[16] *Id.* at 2615, para. 82.

[17] *Id.* at 2614, para. 80.

[18] *See id.* at 2614-15, para. 81.

[19] *Id.* at 2614-15, paras. 80-82.

[20] *Third Reevaluation of STIR/SHAKEN Extensions Public Notice* at 6-7.

impact does the extension have on the Commission's longstanding goal of achieving ubiquitous deployment of the STIR/SHAKEN framework? Is it necessary for the extension to remain indefinite?

Extension for Providers That Cannot Obtain a SPC Token. Second, we seek comment on the Commission's extension for providers that cannot obtain a SPC token. To participate in STIR/SHAKEN, a provider must obtain a SPC token through the STIR/SHAKEN governance system.[21] In the *Second Caller ID Authentication Report and Order*, the Commission granted providers that are incapable of obtaining a SPC token due to Governance Authority policy an extension until they are capable of obtaining a token.[22] The Commission found that the extension was necessary because some providers were unable to obtain SPC tokens at that time, and participation in STIR/SHAKEN without access to the required token was impossible.[23] In May 2021, the Governance Authority revised the STI-GA Token Access Policy to enable token access by some providers previously unable to receive a token.[24] While the Bureau previously found in 2021 and 2022 that token access no longer stood as a significant barrier to full participation in STIR/SHAKEN, the Bureau declined to revise the SPC token extension on the basis that it remained necessary for the reasons originally identified by the Commission.[25]

In March 2023, the Commission sought comment on whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain a SPC token.[26] In the record the Commission received in response, commenters largely focused on the intersection between SPC token access and third-party caller ID authentication practices.[27] Because of the Commission's ongoing consideration of these issues, during its 2023 reevaluation process, the Bureau concluded that the SPC token extension remained necessary without modifications.[28]

We seek further comment today on whether the Bureau should revise this ongoing extension for

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[21] *Call Authentication Trust Anchor, Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions*, WC Docket Nos. 17-97 and 21-291, Third Report and Order, 36 FCC Rcd 12878, 12879-81, paras. 4-6 (2021) (explaining the STIR/SHAKEN governance system and policy for obtaining SPC tokens) (*Third Caller ID Authentication Report and Order*). As the current Governance Authority, the Secure Telephone Identity Governance Authority defines the policies and procedures for the issuance and use of SPC tokens. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11 & n.37; *see also* Secure Telephone Governance Authority, *STI Governance Authority*, https://sti-ga.atis.org (last visited Sept. 12, 2024).

[22] 47 CFR § 64.6304(b); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, paras. 49-50.

[23] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, para. 50.

[24] *Caller ID Authentication Governance Framework Revised to Enable Earlier Participation by Providers Without Direct Access to Telephone Numbers*, WC Docket Nos. 13-97, 17-97, Public Notice, 36 FCC Rcd 8318 (WCB May 10, 2021).

[25] *First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 17750-51; *Second Reevaluation of STIR/SHAKEN Extensions Public Notice* at 14880-81.

[26] *Sixth Caller ID Authentication Order and Further Notice* at 2623, paras. 107-08.

[27] *See, e.g.*, New York State Public Service Commission (NYPSC) Comments, WC Docket No. 17-97, at 2 (rec. June 5, 2023) (arguing that the Commission should eliminate the extension and require providers that cannot obtain an SPC token to use third-party authentication methods); NTCA Comments, WC Docket No. 17-97, at 3 (rec. June 6, 2023) (stating that "the low cost of obtaining tokens . . . is certainly outweighed by the benefit of closing a serious security vulnerability"); CTIA Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring originating providers to obtain their own SPC tokens will encourage innovation in STIR/SHAKEN); ZipDX Reply, WC Docket No. 17-97, at 4 (rec. July 2, 2023) (arguing that "the cost to obtain and maintain a token is revenue-based and will be small for a small reseller"); *but see* INCOMPAS Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring all providers to obtain a token will "necessitate changes with both the industry's token access policies and the Commission's current administration of voice service providers").

[28] *Third Reevaluation of STIR/SHAKEN Extensions Public Notice* at 6.

providers that cannot obtain a SPC token. In so doing, we note that the issue of whether to eliminate this extension remains pending for consideration by the full Commission in response to the *Sixth Caller ID Authentication Further Notice*. Since the Bureau found in the 2021 and 2022 annual reevaluations that token access no longer stood as a significant barrier to full participation in STIR/SHAKEN, should the Bureau recommend to the Commission that it terminate the extension, and, if so, what would be an appropriate end date? Are there still providers that are unable to obtain a token and therefore require this extension? If so, we seek comment on the specific type of providers that are affected, the specific requirements for obtaining an SPC token that these providers cannot satisfy, and why those requirements cannot be satisfied. How many of such providers are currently operating in the U.S., and are these providers materially compromising ubiquitous implementation of the STIR/SHAKEN framework? More generally, how should the record the Commission received in response to the *Sixth Caller ID Authentication Further Notice* inform or impact the Bureau's reevaluation of the implementation extension for providers that cannot obtain a SPC token?

III. PROCEDURAL MATTERS

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.

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. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[29] 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

[29] 47 CFR §§ 1.1200 *et seq.*

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).[30] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Contact Information. For further information, please contact CJ Ferraro, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau at (202) 418-1322 or by email at Connor.Ferraro@fcc.gov.

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[30] *Id.* § 1.1206(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 24-1020
September 30, 2024

SES-INTELSAT TRANSFER OF CONTROL APPLICATIONS REFERRED TO EXECUTIVE BRANCH

SB Docket No. 24-267

On September 18, 2024, the U.S. Department of Justice, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Service Sector (Committee), filed a letter in this proceeding requesting that the Commission refer the transfer of control applications filed by SES S.A. and Intelsat S.A. to the Committee for its review.[1] The Department of Justice further requests that the Commission defer action on the applications until the Committee has concluded its review and offered its recommendation.[2] Through this Public Notice, pursuant to Commission practice, the Space Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology refer the SES-Intelsat transfer of control applications to the Committee for its views on any national security or law enforcement concerns related to the applications.[3]

[1] Letter from Christopher R. Clements, Deputy Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, SB Docket No. 24-267 (filed Sept. 18, 2024).

[2] *Id.*

[3] *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020). The applications being referred are listed in the Attachment to this Public Notice.

ATTACHMENT

Part 5 – Experimental Licenses

File Number	Licensee	Lead Call Sign
0027-EX-TU-2024	Intelsat Inflight Licenses LLC	WF2XMC
0028-EX-TU-2024	Intelsat License LLC	WO2XDP

Part 25 – Space Station Licenses

File Number	Licensee	Lead Call Sign
SAT-T/C-20240530-00116	Horizons−3 License LLC	S2947
SAT-T/C-20240530-00117	Intelsat License LLC	S2846

Part 25 – Space Station Grants of U.S. Market Access

File Number	Grantee	Call Sign
SAT-MPL-20240809-00176	Intelsat License LLC	S3058
SAT-MPL-20240809-00177	Intelsat License LLC	S2592
SAT-MPL-20240809-00178	Horizons−1 Satellite LLC	S2475
SAT-MPL-20240809-00179	Horizons−4 Satellite LLC	S3180

Part 25 – Earth Station Licenses

File Number	Licensee	Lead Call Sign
SES-T/C-20240530-01222	Intelsat Inflight Licenses LLC	E150104
SES-T/C-20240603-01221	Intelsat License LLC	E000048

Part 90 – Industrial/Business Pool Private Wireless License

File Number	Licensee	Lead Call Sign
0011092560	Intelsat License LLC	WQSW724

– FCC –

PUBLIC NOTICE

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DA 24-1021
Released: September 30, 2024

THE FEDERAL COMMUNICATIONS COMMISSION NARROWS THE SCOPE OF THE DISASTER INFORMATION REPORTING SYSTEM AND THE MANDATORY DISASTER RESPONSE INITIATIVE FOR COMMUNICATIONS IMPACTED BY HURRICANE HELENE

The Federal Communications Commission (FCC), at the request of the States of Florida, Georgia, South Carolina, Tennessee, and Virginia, and in coordination with the Department of Homeland Security's 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 Response Initiative (MDRI) for the following counties affected by Hurricane Helene:

Florida: Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.[1]

Georgia: Atkinson, Baker, Baldwin, Banks, Barrow, Bartow, Bibb, Bleckley, Brantley, Brooks, Butts, Calhoun, Camden, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dooly, Dougherty, Douglas, Early, Elbert, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glynn, Gordon, Greene, Gwinnett, Habersham, Hall, Haralson, Harris, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jones, Lamar, Laurens, Lee, Lumpkin, Macon, Madison, Marion, Meriwether, Miller, Mitchell, Monroe, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Rockdale, Schley, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taylor, Terrell, Thomas, Tift, Towns, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Washington, Webster, White, Whitfield, Wilcox, Wilkinson, and Worth.

Communications providers do not need to provide any additional reporting in DIRS for these areas in Florida and Georgia with respect to Hurricane Helene. 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. Facilities-based mobile wireless providers are no longer required to perform MDRI-related functions for the states of Florida and Georgia.[2] The Network Outage Reporting System reporting obligations under Part 4 of the

[1] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina,* Public Notice, DA 24-991 (rel. Sept. 25, 2024) ("*DIRS and MDRI Activation PN*").

[2] Note that the MDRI had been activated in response to Hurricane Helene for the states of Florida, Georgia, North Carolina, and South Carolina *See DIRS and MDRI Activation PN* at 1. DIRS and MDRI activation was later expanded to additional counties in South Carolina, and to counties in the State of Tennessee and the Commonwealth

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 areas in Florida and Georgia covered by DIRS reporting for Hurricane Helene.[3]

DIRS remains activated in the following counties:

Florida: Hamilton.

Georgia: Appling, Bacon, Ben Hill, Berrien, Bryan, Bulloch, Burke, Candler, Charlton, Chatham, Clinch, Coffee, Columbia, Cook, Dodge, Echols, Effingham, Emanuel, Glascock, Grady, Hancock, Hart, Jeff Davis, Jefferson, Jenkins, Johnson, Lanier, Liberty, Lincoln, Long, Lowndes, McDuffie, McIntosh, Montgomery, Pierce, Richmond, Screven, Taliaferro, Tattnall, Telfair, Toombs, Treutlen, Warren, Wayne, Wheeler, and Wilkes.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, , Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Sevier, Unicoi, and Washington.

Virginia: Alleghany, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Franklin, Giles, Grayson, Highland, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

Please continue to provide information for the impacted parishes that are already in the disaster area.

The MDRI remains activated in the following counties:

Florida: Hamilton.

Georgia: Appling, Bacon, Ben Hill, Berrien, Bryan, Bulloch, Burke, Candler, Charlton, Chatham, Clinch, Coffee, Columbia, Cook, Dodge, Echols, Effingham, Emanuel, Glascock, Grady, Hancock, Hart, Jeff Davis, Jefferson, Jenkins, Johnson, Lanier, Liberty, Lincoln, Long, Lowndes, McDuffie, McIntosh,

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of Virgnia. *See The Federal Communications Commission Announces the Expansion of the Disaster Information Reporting System and the Mandatory Disaster Response Initiative for Communications Impacted by Hurricane Helene,* Public Notice, DA 24-1015 (rel. Sept. 27, 2024).

[3] 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 communications, wireless, wireline, and interconnected VoIP providers required to report in DIRS pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS).

Montgomery, Pierce, Richmond, Screven, Taliaferro, Tattnall, Telfair, Toombs, Treutlen, Warren, Wayne, Wheeler, and Wilkes.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, , Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Sevier, Unicoi, and Washington.

Virginia: Alleghany, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Franklin, Giles, Grayson, Highland, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

The FCC continues to monitor this event and may amend the DIRS and/or 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
Juan Chapa (202) 418-0431, juan.chapa@fcc.gov
Julia Tu (202) 418-0731, julia.tu@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 Helene, please go to www.fcc.gov/Helene.

- FCC -

PUBLIC NOTICE

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DA 24-1022
Released: October 1, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU EXTENDS 2024 EAS TEST REPORTING SYSTEM (ETRS) FILING DEADLINE

PS Docket Nos. 15-94 and 15-91

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces the extension of the deadline for all EAS Participants[1] to submit their ETRS Form One for calendar year 2024 in the Emergency Alert System (EAS) Test Reporting System (ETRS) to October 18, 2024.[2] The Bureau extends the filing deadline, which was previously October 4, 2024, to reduce burdens on EAS Participants that are recovering from the damage caused by Hurricane Helene. EAS Participants that have already submitted their ETRS Form One for calendar year 2024 need not take any further action.

Filers can access ETRS by visiting the ETRS page of the Commission's website at https://www.fcc.gov/general/eas-test-reporting-system. 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=.

I. 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.

-FCC-

[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).

PUBLIC NOTICE

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DA 24-1023

Released: October 1, 2024

MEDIA BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ACTION

INFLATION ADJUSTMENT FIGURES FOR CABLE OPERATORS USING FCC RATE REGULATION FORMS 1210 AND 1240 NOW AVAILABLE

This Public Notice is applicable to rate-regulated cable operators that use FCC Forms to justify their cable rates.[1] Cable operators adjusting the non-external cost portion of their rates for inflation should follow the instructions provided with the applicable FCC Form. All inflation adjustment figures are based on changes in the Gross National Product Price Index (GNP-PI) published by the United States Department of Commerce, Bureau of Economic Analysis (BEA). The chain-type price indexes were obtained from the BEA Table 1.7.4 (Price Indexes for Gross Domestic Product, Gross National Product, and Net National Product) Line 4 (Gross National Product) on September 26, 2024.[2]

FCC Form 1210

Operators filing FCC Form 1210 may make an annual adjustment based on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made. The inflation factor for the twelve months ended June 30, 2024 is 1.0257. Operators who wish to take this year's inflation adjustment using FCC Form 1210 should enter the figure "1.0257" on Lines I5 and J5 of the form. This year's inflation adjustment factor is calculated by dividing the second quarter 2024 GNP-PI (124.851) by the second quarter 2023 GNP-PI (121.721). Operators may take this year's inflation adjustment between October 1, 2024 and August 31, 2025.

FCC Form 1240

Operators filing FCC Form 1240 may make an adjustment based on quarterly figures. The second quarter 2024 inflation factor for operators using FCC Form 1240 is 2.52%. The adjustment factor of 2.52% is a measure of the annualized change in prices occurring over the period from April 1, 2024 to June 30, 2024. The inflation adjustment factor is calculated by dividing the GNP-PI for the second quarter of 2024 (124.851) by the GNP-PI for the first quarter of 2024 (124.077). The result of this calculation is converted from a quarterly change measurement factor to an annual change measurement factor by raising it to the fourth power. We then convert the calculation to an inflation adjustment factor by subtracting one.

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[1] Pursuant to 47 CFR §§ 76.922(d)(2) and 76.922(e)(2), cable operators may adjust the non-external cost portion of their rates for inflation.

[2] Table 1.7.4 can be found at this link: https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0MiJdXX0=.

Operators calculating the Inflation Factor for a True-Up Period that includes some portion of the second quarter of 2024 should enter the inflation factor on the appropriate lines of Worksheet 1 of FCC Form 1240 as "0.0252." Operators using this factor for calculating the Projected Period Inflation Segment of FCC Form 1240 should enter this number on Line C3 (January 1996 version), or Line C5 (July 1996 version) as "1.0252".

Each quarter the Commission releases a quarterly inflation factor for use with FCC Form 1240. The following table lists these factors beginning in 2018.[3]

Year	Quarter	Dates Covered	Inflation Factor
2019	First	Jan. 1, 2019 – Mar. 31, 2019	0.90%
2019	Second	Apr. 1, 2019 – Jun. 30, 2019	2.42%
2019	Third	Jul. 1, 2019 – Sep. 30, 2019	1.81%
2019	Fourth	Oct. 1, 2019 – Dec. 31, 2019	1.28%
2020	First	Jan. 1, 2020 – Mar. 31, 2020	1.41%
2020	Second	Apr. 1, 2020 – Jun. 30, 2020	-1.82%
2020	Third	Jul. 1, 2020 – Sep. 30, 2020	3.51%
2020	Fourth	Oct. 1, 2020 – Dec. 31, 2020	2.04%
2021	First	Jan. 1, 2021 – Mar. 31, 2021	4.32%
2021	Second	Apr. 1, 2021 – Jun. 30, 2021	6.07%
2021	Third	Jul. 1, 2021 – Sep. 30, 2021	5.95%
2021	Fourth	Oct. 1, 2021 – Dec. 31, 2021	7.13%
2022	First	Jan. 1, 2022 – Mar. 31, 2022	8.19%
2022	Second	Apr. 1, 2022 – Jun. 30, 2022	9.00%
2022	Third	Jul. 1, 2022 – Sep. 30, 2022	4.37%
2022	Fourth	Oct. 1, 2022 – Dec. 31, 2022	3.88%
2023	First	Jan. 1, 2023 – Mar. 31, 2023	4.14%
2023	Second	Apr. 1, 2023 – Jun. 30, 2023	1.74%
2023	Third	Jul. 1, 2023 – Sep. 30, 2023	3.33%
2023	Fourth	Oct. 1, 2023 – Dec. 31, 2023	1.63%
2024	First	Jan. 1, 2024 – Mar. 31, 2024	3.05%
2024	Second	Apr. 1, 2024 – Jun. 30, 2024	2.52%

The Commission releases a new quarterly inflation factor for operators using FCC Form 1240 four times each year. The inflation factor for a given quarter is usually released between three and four months after the end of the quarter, depending on the schedule of the Department of Commerce. The release of a new factor is posted on the Commission's Internet site at: https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240.

For additional information, contact Jake Riehm, jake.riehm@fcc.gov, (202) 418-2166 or Kim Makuch, kim.makuch@fcc.gov, (202) 418-2252.

TTY: (202) 418-0432 or 1 (888) 835-5322

–FCC–

[3] For pre-2019 inflation figures see https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240.

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

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

ORDER

Adopted: October 1, 2024 **Released: October 1, 2024**

By the Chief, Wireline Competition Bureau:

1. On September 29, 2024, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) announced that the President has signed a Major Disaster Declaration for certain areas in Florida affected by Hurricane Helene and signed a Major Disaster Declaration for certain areas in North Carolina affected by Tropical Storm Helene.[1] FEMA has also announced that the President has signed Emergency Declarations for certain areas in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia affected by Hurricane Helene, Tropical Storm Helene, and Post-Tropical Cyclone Helene, as applicable.[2] To assist telephone customers in those areas subject to the Helene Weather Event Declarations, we grant, on our own motion, a temporary partial waiver of the Commission's telephone number "aging" rule. Specifically, we waive section 52.15(f)(1)(ii) with respect to the maximum aging period for residential customers, which states, in pertinent part, that service providers may only age telephone numbers that have been disconnected for up

[1] FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-florida; FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for North Carolina (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-north.

[2] FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Alabama (Sept. 26, 2024), https://www.fema.gov/press-release/20240927/president-joseph-r-biden-jr-approves-emergency-declaration-alabama; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Florida (Sept. 24, 2024), https://www.fema.gov/press-release/20240924/president-joseph-r-biden-jr-approves-emergency-declaration-florida; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Georgia (Sept. 26, 2024), https://www.fema.gov/press-release/20240926/president-joseph-r-biden-jr-approves-emergency-declaration-georgia; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for North Carolina (Sept. 26, 2024), https://www.fema.gov/press-release/20240926/president-joseph-r-biden-jr-approves-emergency-declaration-north-carolina; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for South Carolina (Sept. 27, 2024), https://www.fema.gov/press-release/20240927/president-joseph-r-biden-jr-approves-emergency-declaration-south-carolina; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Tennessee (Sept. 28, 2024), https://www.fema.gov/press-release/20240928/president-joseph-r-biden-jr-approves-emergency-declaration-tennessee; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Virginia (Sept. 29, 2024); https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-emergency-declaration-virginia. We refer to Hurricane Helene, Tropical Storm Helene, and Post-Tropical Cyclone Helene as the Helene Weather Events. Similarly, we refer to the Emergency Declarations and Major Disaster Declarations as Helene Weather Event Declarations.

to 90 days before assigning them to other customers.[3] We also encourage service providers to port telephone numbers to locations that may be outside of a customer's telephone rate center and to waive certain service charges in order to assist customers experiencing this disaster.

2. We find there is good cause for this partial waiver, as required by section 1.3 of the Commission's rules.[4] We recognize that customers who have been displaced by the Helene Weather Events may want to discontinue their service temporarily and reinstate it at a later time. Due to the extent of the damage to telecommunications systems in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia, we expect that in many cases these customers may seek to reinstate their service after the 90-day period has lapsed. Assisting residential customers who are dealing with the effects of a hurricane, tropical storm, or post-tropical cyclone is in the public interest and thus warrants a temporary partial waiver of section 52.15(f)(1)(ii) of the Commission's rules. A partial waiver of section 52.15(f)(1)(ii) will allow service providers in the affected areas, upon their customers' request, to disconnect temporarily the customers' telephone service to avoid billing issues, and then reinstate the customers' same numbers when service is reconnected. This partial waiver applies to all companies that provide service in areas of Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia covered by the Helene Weather Event Declarations and any other Emergency Declarations or Major Disaster Declarations pertaining to the Helene Weather Events. This partial waiver is in effect immediately and for a 270-day period, expiring on June 28, 2025.

3. This partial waiver of the aging rule will also apply to residential customers in areas subject to future Major Disaster and Emergency Declarations signed by the President due to hurricanes, typhoons, tropical storms, and tropical cyclones during 2024.[5] Any future partial waivers will expire 270 days from the date the President declares a state of emergency or major disaster for affected areas. If service providers are unable to resume service on a normal basis after this time period has lapsed, they should request additional relief from the Wireline Competition Bureau.

4. Also, because of substantial damage to telecommunications systems caused by the Helene Weather Events, we recognize that customers in the affected areas may wish to port numbers to locations outside their rate centers. To facilitate their customers' continued access to telecommunications service following the Helene Weather Events, we encourage service providers to port telephone numbers geographically outside a rate center to the extent it is technically feasible. We also encourage all service providers in the areas affected by the Helene Weather Events, and any future hurricanes, typhoons, tropical storms, and tropical cyclones covered under this Order, to waive call forwarding, message center, and voicemail service charges for affected customers, to the extent lawfully permitted, until the customers' service is restored.

[3] 47 CFR § 52.15(f)(1)(ii) ("Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no less than 45 days and for no more than 90 days."). We do not waive the 45-day minimum aging requirement.

[4] 47 CFR § 1.3 (providing that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown").

[5] The Federal Emergency Management Agency (FEMA) maintains a list of declared disasters on its website. FEMA, *Declared Disasters*, https://www.fema.gov/disaster/declarations (last visited Sept. 30, 2024).

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251(b)(2), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(b)(2) and 251(e), and sections 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.291, 1.3, that section 52.15(f)(1)(ii), 47 CFR § 52.15(f)(1)(ii), is waived to the extent herein described herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Schools and Libraries Universal Service Support Mechanism	)	WC Docket No. 02-6
	)	
Establishing Emergency Connectivity Fund to Close the Homework Gap	)	WC Docket No. 21-93
	)	
Rural Health Care Universal Service Support Mechanism	)	WC Docket No. 02-60
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	

ORDER

Adopted: October 1, 2024 **Released: October 1, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order and on our own motion, we waive certain Lifeline, E-Rate,[1] Emergency Connectivity Fund (ECF), Rural Health Care (RHC), and High Cost rules and deadlines to assist participants and service providers, including Universal Service Fund (USF) contributors, located in the areas affected by Hurricane Helene, Tropical Storm Helene and Post-Tropical Cyclone Helene which initially struck Florida's Gulf Coast on September 26, 2024, as a Category 4 storm, and caused widespread damage in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia. The resulting heavy rainfall, catastrophic winds, and flooding have caused significant power outages, communications network outages, and damage to homes, schools, libraries, and health care facilities throughout the impacted areas. Because of these compelling and unique circumstances, we find good cause to waive certain rules and deadlines to assist program participants, service providers, and USF contributors in the affected areas.[2]

[1] E-Rate is formally known as the schools and libraries universal support mechanism.

[2] *See Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; Connect America Fund; Universal Service Contribution Methodology,* CC Docket No. 02-6, WC Docket Nos. 21-450, 11-42, 21-93, 02-60, 10-90, 06-122, Order, DA 23-805 (WCB Sept. 1, 2023) *(Hurricane Idalia Order)*; *Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; Connect America Fund; Universal Service Contribution Methodology,* CC Docket No. 02-6, WC Docket Nos. 21-450, 11-42,
(continued….)

II. BACKGROUND

2. On Thursday, September 26, 2024, Hurricane Helene struck Florida's Gulf Coast as a Category 4 storm with winds speeds of 140 mph before moving inland as a Category 1 storm and causing historic flooding, significant infrastructure damage, and communications blackouts to affected areas in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.[3] More than two million businesses and residents are without power including schools and hospitals.[4] At least 100 people are dead, and 600 missing, with thousands more misplaced from their homes or stranded due to flooding and road closures.[5] The President has approved a major disaster declaration for the States of Florida, North Carolina, and South Carolina and an emergency declaration for the States of Alabama, Georgia, and Tennessee and the Commonwealth of Virginia, allowing authorities to provide disaster relief.[6]

(Continued from previous page)
21-93, 02-60, 10-90, 06-122, Order, DA 23-723 (WCB Aug. 18, 2023) *(Hawaii Wildfires Order)*; *Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-998 (WCB Sept. 22, 2022) (*Hurricane Fiona Order*); *Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-1063 (WCB Oct. 4, 2022) (*Hurricane Ian Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456 (2017) (*Hurricanes Harvey, Irma & Maria Order*) (waiving certain E-Rate, RHC, Lifeline, and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts).

[3] *See* Alex Sundby, Tom Hanson, Brian Dakss, David Yeomans, CBS News, Hurricane Helene's death toll tops 100 as Southeast digs out from storm's devastation (Sept. 30, 2024) https://www.cbsnews.com/news/hurricane-helene-path-florida/; *see also Siladitya Ray, Forbes, More Than 2 Million Without Power as Hurricane Helene Moves Into Georgia as Category 1 Storm,* https://www.forbes.com/sites/siladityaray/2024/09/27/more-than-2-million-without-power-as-hurricane-helene-moves-into-georgia-as-category-1-storm-photos/.

[4] *See also* Siladitya Ray, Forbes, *More Than 2 Million Without Power as Hurricane Helene Moves Into Georgia as Category 1 Storm*, https://www.forbes.com/sites/siladityaray/2024/09/27/more-than-2-million-without-power-as-hurricane-helene-moves-into-georgia-as-category-1-storm-photos/.

[5] *Id.*

[6] *See* FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida (Sept. 28, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-florida; FEMA, President Joseph R Biden, Jr. Approves Major Disaster Declaration for North Carolina (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-north; FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for South Carolina (Sept. 30, 2024), https://www.fema.gov/press-release/20240930/president-joseph-r-biden-jr-approves-major-disaster-declaration-south; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Alabama (Sept. 26, 2024), https://www.fema.gov/press-release/20240927/president-joseph-r-biden-jr-approves-emergency-declaration-alabama; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Georgia (Sept. 26, 2024), https://www.fema.gov/press-release/20240926/president-joseph-r-biden-jr-approves-emergency-declaration-georgia; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Tennessee (Sept. 28, 2024), https://www.fema.gov/press-release/20240928/president-joseph-r-biden-jr-approves-emergency-declaration-

(continued….)

III. DISCUSSION

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain USF Program deadlines for areas affected by natural disasters.[7] Generally, the Commission's rules may be waived for good cause shown.[8] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[9] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[10]

4. In response to the damage caused by the Helene Weather Events, on our own motion, we waive various provisions of the Lifeline, E-Rate, ECF, RHC Program, and High Cost rules for those Federal Communications Commission (FCC or Commission) programs' participants and for USF contributors located in the Affected Disaster Areas.[11] For the purposes of the waivers we grant today, we define "Affected Disaster Areas" as the areas covered by the Helene Weather Event Declarations and any other Emergency Declarations or Major Disaster Declarations pertaining to the Helene Weather Events, including declarations issued related to the Helene Weather Event after release of this Order.[12]

A. Lifeline

5. We first waive the Lifeline non-usage and recertification requirements for subscribers residing in the Affected Disaster Areas. We find that good cause exists to waive sections 54.405(e)(3),

(Continued from previous page)
tennessee; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Virginia (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-emergency-declaration-virginia. We refer to Hurricane Helene, Tropical Storm Helene, and Post-Tropical Cyclone Helene as the Helene Weather Events. Similarly, we refer to the Emergency Declarations and Major Disaster Declarations as Helene Weather Event Declarations.

[7] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefits Program,* CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission's Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

[8] 47 CFR § 1.3.

[9] *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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

[11] We recognize that entities in the Affected Disaster Areas may need additional relief relating to Lifeline, E-Rate, ECF, RHC, High Cost, and Contributions obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief from the Bureau to address these individualized circumstances.

[12] *See* supra note 6.

54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in the Affected Disaster Areas through November 30, 2024.[13] The waiver period for these rules will expire November 30, 2024. Given the devastation caused by the Helene Weather Events to infrastructure in the Affected Disaster Areas, strict compliance with these rules may be impractical and may risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.[14]

6. To promote the maintenance and rebuilding of communities affected by the hurricane and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.[15] Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.[16] Waiving these rules will help low-income consumers retain access to emergency communications services during this natural disaster. This waiver also allows ETCs to continue providing Lifeline service to disaster victims in the Affected Disaster Areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of the hurricane.[17]

7. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through November 30, 2024.[18] This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.[19] Waiver of these rules will allow the Universal Service Administrative Company (USAC) and ETCs serving Lifeline subscribers in the Affected Disaster Areas additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the Helene Weather Events could make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

8. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled, and was not actually de-enrolled, after September 23, 2024. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had

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[13] *See* 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

[14] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6, Order, 37 FCC Rcd 11310 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and Affordable Connectivity Program rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian); *Affordable Connectivity Program et al*., WC Docket No. 21-450, Order, 38 FCC Rcd 7922 (WCB 2023) (issuing similar waivers in response to Hurricane Idalia).

[15] 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

[16] *See id.*

[17] After the end of the waiver period, the subscriber will have 30 days (beginning on December 1, 2024) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 31, 2024.

[18] 47 CFR §§ 54.405(e)(4), 54.410(f).

[19] *See* 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

previously de-enrolled from the program must re-enroll pursuant to the Commission's rules. Additionally, to the extent that a Lifeline subscriber successfully completes their recertification process in 2025, they would not be required to undergo Lifeline recertification again in 2025.

9. ETCs in the Affected Disaster Areas that are unable to comply with the Lifeline non-usage and recertification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the hurricane has significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

B. E-Rate Program

10. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following E-Rate program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 486, 472, and 474; (3) the September 30, 2024 service implementation deadline for non-recurring services; (4) portions of the service and equipment substitution rule; and (5) document retention and production requirements for participating E-Rate applicants and service providers whose documents were destroyed by the Helene Weather Events.

11. *E-Rate Program Deadlines.* For applicants located in Affected Disaster Areas, we waive, on a temporary basis, the following deadlines that may occur on and after September 23, 2024,[20] and provide those affected with up to 150 calendar days from the release date of this Order to submit the required filing:[21]

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.[22]
- Filing FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).[23]
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).[24]

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[20] *See supra* note 6. E-Rate program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by Hurricane Helene may submit the required filings up to 150 calendar days from the release date of this Order.

[21] We note that USAC, the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

[22] 47 CFR §§ 1.106, 54.720. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should include this waiver in their filing.

[23] Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; *see also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

[24] 47 CFR § 54.514(a). Given the significant damage inflicted by the Helene Weather Events, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline rule. *See Hurricanes Harvey, Irma and Maria Order*, 32 FCC Rcd at 7458, n.13 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13407-08, at para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *Hurricane Fiona Order*, 37 FCC Rcd at 10805, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Fiona); *Hurricane Ian Order*, 37 FCC Rcd at 11312, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ian); *Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief; Affordable Connectivity Program*; *Lifeline and Link Up Reform and Modernization*; *Schools and Libraries Universal Support Mechanism*; *Rural Health Care Universal Service Support Mechanism*; *Connect America Fund*; *Universal Service Contribution Methodology*; *Telephone Number Portability*; *Numbering Resource Optimization*, CC Docket Nos. 02-6, 95-116,

(continued….)

12. *Service Implementation Deadline Extensions*. Additionally, we find that good cause exists to waive section 54.507(d)(4) of the Commission's rules, subject to the limitations herein, for applicants located in the Affected Disaster Areas. We find that the extensive damage to property, facilities, and resources resulting from the Helene Weather Events will make it impossible for some applicants in the Affected Disaster Areas to complete the installation of internal connections and other non-recurring services by the September 30, 2024 deadline for Funding Year (FY) 2023. Accordingly, we extend the FY 2023 implementation deadline for non-recurring services to September 30, 2025 for applicants in the Affected Disaster Areas, and we likewise extend the deadline for all other applicants that have non-recurring service funding requests with September 30, 2024 as the deadline and are located in the Affected Disaster Areas.[25]

13. *Service and Equipment Substitutions*. Consistent with precedent,[26] we will also provide increased flexibility for service and equipment substitutions in the Affected Disaster Areas. Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;[27] (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.[28] For applicants located in Affected Disaster Areas that need to replace services or product(s) that have been disrupted, destroyed, or rendered unusable by the Helene Weather Events, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or

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99-200, WC Docket Nos. 21-450, 11-42, 02-60, 10-90, 06-122, 38 FCC Rcd 6027, 6034, para. 16 (WCB 2023) (*Typhoon Mawar Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Typhoon Mawar); *Hawaii Wildfires Order*, 38 FCC Rcd at 7594, para. 16 (waiving the E-Rate invoice filing deadline for areas impacted by the Hawaii Wildfires); *Hurricane Idalia Order*, 38 FCC Rcd at 7929, para. 16 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Idalia); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

[25] 47 CFR § 54.507(d)(4)*; see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No, 02-6, Order, 37 FCC Rcd 10727, 10728, para. 4 (WCB 2022) (extending the service implementation deadline for certain FY 2020 and 2021 funding requests that had September 30, 2022 as the deadline pursuant to section 47 CFR § 54.507(d)(4)).

[26] *See, e.g.*, *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 37 FCC Rcd at 10807-08, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 37 FCC Rcd at 11314-15, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ian); *Typhoon Mawar Order*, 38 FCC Rcd at 6036-37, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Typhoon Mawar); *Hawaii Wildfires Order*, 38 FCC Rcd at 7595, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of the Hawaii Wildfires); *Hurricane Idalia Order*, 38 FCC Rcd at 7930-32, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Idalia).

[27] The Commission previously determined that an equipment or service substitution request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

[28] 47 CFR § 54.504(d)(1)(iv).

product that it is replacing.[29] This will allow applicants in the Affected Disaster Areas maximum flexibility to substitute services and product(s) based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),[30] so that they may use already approved E-Rate funding to replace damaged or destroyed products(s) and restore services, subject to the limitations stated herein.[31] We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use E-Rate funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules while keeping the remaining aspects of our service and equipment substitution rule intact. Applicants must continue to ensure that a service and/or equipment substitution: (a) does not violate any contract provisions;[32] (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.[33] Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

14. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records as a result of the destruction caused by the Helene Weather Events. We waive section 54.516(a) of our rules with respect to such destroyed records, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service

[29] 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service and equipment substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.*, 47 CFR § 54.507(d)(1), (d)(4); *see also Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*).

[30] In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism, et al.,* CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order)*, and stating that the new requirements are in addition to those outlined in the *Copan Order*).

[31] Beginning in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See* 47 CFR § 54.513(d); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. 47 CFR § 54.513(d).

[32] The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by Hurricane Helene is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested equipment and service substitutions are permitted under their agreements with service providers.

[33] 47 CFR § 54.504(d). In the event that an equipment or service substitution results in a change in the pre-discount price for the supported equipment or service, support is based on the lower of either the pre-discount price of the equipment or service for which support was originally requested or the pre-discount price of the new, substituted equipment or service. *See* 47 CFR § 54.504(d)(2).

delivery deadline for the funding request.[34] Applicants and service providers will not be penalized for failure to retain or produce records destroyed by the hurricane. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Helene Weather Events. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the Helene Weather Events, including records relating to any relief granted by this Order.

15. We find that the significant property damage, power outages, and disruptions in services caused by the Helene Weather Events in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by the Helene Weather Events, while continuing to protect program integrity. E-Rate applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

C. Emergency Connectivity Fund Program

16. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Emergency Connectivity Fund (ECF) program rules: (1) the 30-day deadline to file appeals and requests for waiver; and (2) document retention and production requirements for participating ECF program participants whose documents were destroyed by the Helene Weather Events.

17. *Emergency Connectivity Fund Program Deadlines*. For ECF program participants located in the Affected Disaster Areas, we first waive, on a temporary basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the release date of this Order to submit their filing.[35] Section 54.1718(b) of the Commission's rules requires an affected party requesting review of a decision by USAC or waiver to submit such request within 30 days from the date of USAC's decision, which is shorter than the timeframe permitted under the E-Rate program rules.[36] Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of the Helene Weather Events, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.[37] For the same reason, we also direct USAC to extend its administrative deadlines associated with information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days from the release date of this Order to respond to such requests.[38]

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[34] 47 CFR § 54.516(a).

[35] 47 CFR § 54.1718(b); 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

[36] 47 CFR § 54.1718(b).

[37] We anticipate that some affected applicants will need more time to submit appeals of USAC's decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

[38] *See, e.g.*, *Hurricane Ida Order*, 36 FCC Rcd at 13413, para. 23 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 37 FCC Rcd at 10808-09, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 37 FCC Rcd at 11316, para. 10 (waiving USAC's ECF

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18. *Documentation Retention and Production*. Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Helene Weather Events, we also waive section 54.1715(b) of the Commission's rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.[39] As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain or produce records destroyed by the Helene Weather Events. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the hurricane. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the hurricane, including records relating to any relief granted by this Order.

D. Rural Health Care Program

19. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the September 30, 2024 deadline for Healthcare Connect Fund Program participants to file Annual Reports; (4) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by the Helene Weather Events; and (5) the invoice deadline.

20. *Deadline for Appeals and Requests for Waiver*. We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.[40] We find that waiving the deadline for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by the Helene Weather Events. We understand that the disruptions caused by the Helene Weather Events will continue to impact health care providers and service providers in the affected areas and find that any harm in giving petitioners additional time to submit their filings is outweighed by the significant public interest benefits. To reduce the burden on petitioners, we direct USAC to automatically provide petitioners with an additional 60 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from September 23, 2024, through 150 calendar days from the release of this Order.

21. *Response Time for USAC Information Requests*. We waive the 14-day deadline for applicants in the Affected Disaster Areas to respond to information requests from USAC.[41] This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by program participants. We understand that in response to the Helene Weather Events, health care providers in the Affected Disaster Areas may have diverted their

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administrative deadlines associated with information requests in the aftermath of Hurricane Ian); *Hawaii Wildfires Order*, 38 FCC Rcd at 7597, para. 22 (waiving USAC's ECF administrative deadlines associated with USAC's information requests in the aftermath of the Hawaii Wildfires); *Hurricane Idalia Order*, 38 FCC Rcd at 7932-33, para. 22 (waiving USAC's ECF administrative deadlines associated with USAC's information requests in the aftermath of Hurricane Idalia).

[39] 47 CFR § 54.1715(b); *see also* 47 CFR § 54.720.

[40] 47 CFR § 54.720(a)-(b).

[41] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015) (*FCC Form 466 Documentation Order*).

administrative resources or be unable to access facilities, which would impede their ability to respond timely to USAC information requests. This waiver will apply to all information requests issued on or after September 23, 2024, regardless of the funding year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

22. *Health Care Connect Fund Program – Annual Reporting*. We also waive the September 30, 2024, deadline in section 54.618 of the Commission's rules for Healthcare Connect Fund Program participants located in the Affected Disaster Areas to file Annual Reports for funding year 2023.[42] We find that the property damage, personal injury, and disruptions in services caused by the Helene Weather Events warrant a waiver of the deadline for the annual reporting requirement. All affected Program participants will have up to 150 calendar days from the effective date of this Order to file Annual Reports for funding year 2023.

23. *Documentation Retention and Production*. We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Helene Weather Events. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.[43] Program participants will not be penalized for failure to retain records destroyed by the hurricane. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Helene Weather Events. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the hurricane, including records relating to any relief granted by this Order.

24. *Invoice Deadline*. We next waive section 54.627(a) to automatically grant a 120-day extension of the invoice deadline for all funding year 2023 funding requests from health care providers in Affected Disaster Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.[44] Program participants may request a one-time extension of the invoice filing deadline.[45] If the extension is timely requested, USAC is required to grant a 120-day extension.[46] We find that waiving the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by the Helene Weather Events. We also understand that the disruptions caused by the Helene Weather Events will continue to impact health care providers and service providers in the Affected Disaster Areas and find that any harm in giving program participants additional time to submit their invoices is outweighed by the significant public interest benefits. To reduce the burden on participants, we direct USAC to automatically provide participants in the Affected Disaster Areas with an additional 120 days to submit their invoices.

[42] 47 CFR § 54.618.

[43] 47 CFR § 54.631(b).

[44] 47 CFR § 54.627(a).

[45] 47 CFR § 54.627(b).

[46] *Id*.

E. High Cost Program

25. We next provide, on a temporary basis and for carriers in the Affected Disaster Areas, a waiver of the Commission's high-cost performance measures testing requirements for fourth quarter 2024 as well as the annual certification required by section 54.314 of the Commission's rules.

26. *Waiver of Performance Measures Testing for Fourth Quarter 2024.* Recipients of high-cost universal service support with broadband build-out obligations must test the speed and latency performance at the supported locations and submit the testing results.[47] The purpose of the testing requirement is to ensure high-cost supported networks meet the required standards for the relevant support program. To capture any seasonal effects on a carrier's broadband performance, carriers must conduct one week of testing in each quarter of the calendar year—January through March (first quarter), April through June (second quarter), July through September (third quarter), and October through December (fourth quarter).[48] Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.[49]

27. Given the substantial service disruptions and outages caused by the Helene Weather Events, the ability of affected carriers to conduct performance testing in the fourth quarter of 2024 may be extremely difficult and burdensome. We previously said that we would generally consider requests "for waiver or extension [of performance testing in cases where a major, disruptive event (e.g., a hurricane) negatively affects a provider's broadband performance."[50] We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of the hurricane, its impact, and recovery efforts, as this waiver relieves affected carriers from the additional burden of filing a petition.

28. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,[51] the extreme nature of the Helene Weather Events warrants waiving the testing requirements for the fourth quarter of 2024 for any carrier serving a location in the Affected Disaster Areas altogether rather than requiring the affected carriers to reschedule. Waiving the testing requirements for the fourth quarter of 2024 is in the public interest as it allows affected carriers to reapportion resources to better meet their customers' needs during storm recovery. Moreover, with this waiver, we are not relieving carriers from providing the required service levels to high-cost supported locations; rather, we are relieving them solely from the requirement to test performance for the fourth quarter of 2024. Affected carriers may be concerned about losing a quarter of testing data and how that will affect its compliance with testing obligations. Therefore, affected carriers may still test its network and certify the results to be part of the compliance calculations. However, pursuant to this waiver, they are not required to do so.[52]

29. The impact of the Helene Weather Events began on September 23, 2024 and travelled through the Affected Disaster Areas through September 29, 2024, dates which fall at the end of the third quarter. We expect carriers to already have completed third quarter testing. Nonetheless, the Bureau will direct the Universal Service Administrative Company (USAC) to contact relevant carriers at an

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[47] The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*), *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). *See also* 47 CFR § 54.313(a)(6).

[48] *See First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

[49] *See First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

[50] *See First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

[51] *Id*.

[52] We appreciate that affected carriers are still assessing their networks in the Affected Disaster Areas, and we will evaluate at a later time whether relief from the applicable deployment milestones is warranted.

appropriate time to determine if any had testing scheduled for the last week of the third quarter so that the Bureau can then provide appropriate relief.

30. *Extension of Annual Certification Deadline for Section 54.314.* In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the carrier, if not subject to the jurisdiction of a state, must file an annual certification by October 1, 2024 stating that all federal high-cost support provided to the carrier within the state 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 support is intended.[53] If a state or carrier files the annual certification after the October 1st deadline, the carrier is subject to a reduction in support.[54] While many states and carriers make this certification prior to the October 1 deadline, we find it in the public interest to temporarily waive the October 1st annual certification deadline for states and carriers in the Affected Disaster Areas, and extend the deadline by 30 days, to November 1, 2024.

F. Contributions

31. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to the USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for providers serving the Affected Disaster Areas. The extensive damage to property and facilities caused by the Helene Weather Events has rendered many providers unable to serve the Affected Disaster Areas. We find that these extremely unusual circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,[55] and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

32. *Form 499-Q Deadlines and Late Fees*. First, we extend the 45-day revision deadline for FCC Form 499-Q filings made on August 1, 2024, by contributors serving the Affected Disaster Areas. Extending this deadline will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of the Helene Weather Events on contributor revenues rather than having to wait until next year's FCC Form 499-A true-up process. We direct USAC to accept revisions to these filings until January 2, 2025.

33. We next temporarily waive sections 54.713(b)-(c) of the Commission's rules for providers located in the Affected Disaster Areas.[56] We direct USAC to refrain from assessing late fees on FCC Form 499-Q filings made by these providers after the upcoming November 1 filing deadline until January 2, 2025.[57] We extend this temporary waiver to consultants and third-party preparers that are based in Affected Disaster Areas and whose operations have sustained damage due to the Helene Weather Events, thus preventing them from meeting the November 1 FCC Form 499-Q deadline. We find that this temporary waiver will prevent these groups whose operations have been substantially impacted by the Helene Weather Events from being unfairly penalized for missing this filing deadline. We additionally direct USAC to refrain from assessing interest and penalties incurred by affected contributors until after January 2, 2025. Finally, we direct USAC to temporarily suspend certain collection activities for providers in the Affected Disaster Areas, as described below.

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[53] 47 CFR § 54.314.

[54] 47 CFR § 54.314(d)

[55] *Affordable Connectivity Program,* et al., Order, 38 FCC Rcd 7922 (2024) (waiving certain E-Rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricane Idalia).

[56] 47 CFR § 54.713(b)-(c).

[57] 47 CFR § 54.713(c). We direct USAC to utilize Line 109 of the FCC Form 499-A to determine whether a provider's headquarters is located in an Affected Disaster Area.

34. *Red Light Rule*. We waive the red light rule for providers in the Affected Disaster Areas. Collections and disbursement rules associated with the Debt Collection Improvement Act (DCIA),[58] stated in Part 1 of the Commission's rules, describe specific provisions which include a rule commonly referred to as the red light rule.[59] The red light rule requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved.[60] With respect to universal service, when an entity's account becomes delinquent by one day, that entity, as well as any other entity associated with it through a shared taxpayer identification number, will be subject to the red light rule and considered to be in red light status.[61] USAC will withhold all program support payments to that entity and any associated entities until the delinquency has been satisfied.[62] Although entities owing debts to the government generally should not receive further benefits from it, we find that the disruption caused by the Helene Weather Events constitutes extremely unusual circumstances and justifies an exception in this case. We find that it is in the public interest and good cause exists to waive the red light rule until January 2, 2025 for providers in the Affected Disaster Areas.

35. *Transfer to Treasury*. Once a debt with USAC becomes 91 days delinquent, the full amount of the outstanding debt is eligible for a DCIA transfer to the United States Department of Treasury for debt collection.[63] Consistent with the additional relief provided for contributors impacted by Hurricane Helene, and to the extent possible, any debts incurred by providers located in the Affected Disaster Areas will not be transferred to Treasury for collection activities between the effective date of this Order and January 2, 2025.[64]

36. We expect that suspending collection activities along with the extensions of filing deadlines and waivers of late fees may help affected providers to continue operations and enable them to accurately file or revise their projected revenues for the Fourth Quarter of 2024 and the First Quarter of 2025. Accordingly, the contribution obligations for those quarters will account for the impact of the Helene Weather Events on the business of these providers. Thus, we do not find it necessary to extend relief beyond January 2, 2025. However, we note that any provider that is unable to comply with the Commission's contributions rules and requirements after January 2, 2025 may request additional, narrowly-tailored relief from the Bureau.[65]

G. Protecting Program Integrity

37. We are committed to protecting the integrity of the Lifeline, E-Rate, ECF, Rural Health Care, and High Cost programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC

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

[59] *Amendment of Parts 0 and 1 of the Commission's Rules/Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004).

[60] *See* 47 CFR § 1.1910(b).

[61] *See* USAC, Late Payments, DCIA, Red Light, https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/ (last visited Sept. 30, 2024).

[62] *Id.*

[63] *Id.; see also* 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) and 901.1; 47 CFR § 1.1917.

[64] *See* 31 U.S.C. § 3711(a)(3); 31 CFR § 903.2(a)(2).

[65] 47 CFR § 1.3.

programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC program user our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

38. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1-4, 251(b)(2), 251(e), and 254 of the Communications Act of 1934, as amended 47 U.S.C. §§ 151-154, 251(b)(2), 251(e), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 1.1910(b), 54.313(a)(6), 54.314(d), 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f), 54.504(d)(1)(i), 54.514(a), 54.516(a), 54.618, 54.627(a), 54.631(b), 54.713(b)-(c), 54.720(b), 54.1715(b), 54.1718(b) of the Commission's rules ARE WAIVED to the extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

Federal Communications Commission
Washington, DC 20554

October 3, 2024

DA 24-1026

SMALL ENTITY COMPLIANCE GUIDE

Administrative Changes to Universal Service Fund
High-Cost and Lifeline Rules
FCC 23-87
WC Docket Nos. 10-90, 23-328, 10-208, 14-58,
WT Docket No. 10-208

Released October 20, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the 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 this Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in the Commission's approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct your comments, recommendations, or calls for further assistance to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

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I. OBJECTIVES OF THE PROCEEDING

On October 20, 2023, the Commission released a Report and Order (*Administrative Order*) making several modifications to, and clarifications of, Commission rules to improve the administration of the Federal Communications Commission (FCC or Commission)'s Universal Service Fund (USF) high-cost program, and to a much lesser extent, the Lifeline program. These changes and clarifications enhance the program's efficiency and efficacy, better safeguard USF, and streamline annual reporting and certification requirements.[1]

II. COMPLIANCE REQUIREMENTS

The rule changes and clarifications in the *Administrative Order* collectively apply to recipients receiving support through various high-cost funding mechanisms, and to a much more limited extent, to recipients of Lifeline support. We describe these requirements below.

A. Annual Reporting and Certification Requirements of High-Cost Support Recipients.

1. Simplification of Annual Reports and Certifications (47 CFR §§ 54.313(i), 54.314). High-cost support recipients will file annual reports and certifications with the Universal Service Administrative Company (USAC) only rather than with USAC and multiple entities.[2]

2. Alignment of Support Reductions for Failure to File Annual High-Cost Information and Certifications by Associated Deadlines (47 CFR §§ 54.313(j)(1), 54.314(d)(1)(iii), 54.316(c)(4)). The support reductions for an eligible telecommunications carrier's (ETC's) failure to certify its annual high-cost deployment information and make annual certifications by the associated deadlines will occur in the month immediately following the notice of support reduction to the ETC by USAC or as soon as feasible thereafter.[3]

3. Performance Measures Testing, Reporting, and Support Withholding (47 CFR § 54.313(a)(6), (j)(3)).

All high-cost support recipients serving fixed locations (including those in compliance with speed and latency requirements) must report and certify performance testing results on a quarterly basis, rather than annually, and must perform broadband performance testing one week out of each quarter.[4] These support recipients must report and certify their quarterly performance testing results within two weeks, rather than within one week, after the end of the quarter in which the tests are conducted.[5] First quarter testing results will be due April 15th, second quarter results will be due July 15th, third quarter results will be due October 15th, and fourth quarter results will be due January 15th.[6] The Bureau will announce when quarterly reporting and certification will go into effect.[7]

The Wireline Competition Bureau (Bureau) will assess support recipients' compliance with program requirements based on annual testing results. If a support recipient is found noncompliant, it

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[1] *Connect America Fund et al.*, WC Docket No. 10-90 et al., WT Docket No. 10-208, Notice of Proposed Rulemaking and Report and Order, FCC 23-87 (Oct. 20, 2023), Erratum (WCB Feb. 13, 2024) (*Administrative Order*).

[2] *Id.* at 60-61, paras. 133-34.

[3] *Id.* at 61-62, para. 135.

[4] *Id.* at 62, para. 136.

[5] *Id.* at 63, para. 138.

[6] *Id.*

[7] *Id.*

will have support withheld until it achieves a full quarter of compliance.[8] Support reductions due to late filings will be assessed at the end of the fourth quarter and will be based on total number of days late divided by four, then rounded to the nearest whole number.[9] When certification of deployed locations on March 1st may impede the carrier's ability to complete some of its testing, the Bureau may exercise discretion when assessing the scope of a carrier's compliance or when implementing support withholdings.[10]

4. Adoption of Uniform Grace Periods (47 CFR §§ 54.314(d)(2), 54.316(c)(3), (d)(4)). All high-cost support recipients that are permitted a one-time grace period to submit a filing under Commission rules must file within four business days of the relevant due date to take advantage of the grace period. For example, if the due date is day zero, then the day after the due date is day one of four.[11]

5. Alignment of Deployment, Certification, and Location Reporting Deadlines for All Connect America Fund (CAF) Phase II Auction Support Recipients (47 CFR §§ 54.310(c), 54.316(b)(4), 54.316(c)(2)). All CAF Phase II auction support recipients (including recipients of support allocated through New York's New NY Broadband program) must meet uniform deployment milestones by deadlines occurring at the end of the specified calendar year (rather than the date the Bureau authorized receipt of support) and must meet annual certification and location reporting requirements as of March 1st.[12]

6. Certification Deadlines for the Bringing Puerto Rico Together Fund Stage 2 and the Connect USVI Fund Stage 2 fixed programs (47 CFR § 54.316(b)(7)). Recipients of support allocated through the Bringing Puerto Rico Together Fund stage 2 and the Connect USVI Fund stage 2 fixed programs must meet an annual certification deadline of March 1st.[13]

7. Reporting Period for Voice and Broadband Rate Certification (47 CFR § 54.313(a)(2), (a)(3)). Carriers submitting the annual FCC Form 481 certify compliance with both the annual voice and broadband pricing benchmarks adopted in the prior calendar year ending the last day of December.[14]

8. Process to Permit the Reporting and Certification of Late Locations (47 CFR § 54.316(d)). Carriers may report and certify locations that should have been reported for a prior reporting year, even after the reporting deadline for that year, in future annual deployment reports (late-reported locations) and count these locations toward their defined deployment obligations.[15] Carriers submitting late-reported locations are subject to a support reduction based on the number of late-reported locations filed and the duration of time between when the location was due to be reported and when the location was actually reported.[16]

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[8] *Id.* at 62, para. 136.

[9] *Id.* at 63, para. 140.

[10] *Id.* at 62, para. 137.

[11] *Id.* at 64-65, para. 146.

[12] *Id.* at 65, para. 147.

[13] *Id.*

[14] *Id.* at 67, para. 150.

[15] *Id.* at 67-68, para. 152.

[16] *Id.* at 67, 70, paras. 152, 158.

Carriers reporting late-locations will not be subject to support reductions for late-reported locations under the following circumstances;

- the late-reported locations were due to be reported prior to the effective date of this rule change;[17]
- the late-reported locations were reported within a one-time four day grace period for amending an annual filing;[18] or
- the late-reported locations were filed after the support recipient has demonstrated compliance with the final milestone.[19]

The support reduction for late-reported locations that do not qualify for these exceptions will occur in the next month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter.[20]

B. Streamlining Review of Rate-of-Return Local Exchange Carrier (LEC) Mergers (47 CFR §§ 51.909(a)(7), 51.917(c)).

1. Calculating Base Period Revenues. Section 51.917(c) of the Commission's rules is revised to provide guidance on calculating Base Period Revenues upon study area merger, consolidation, or acquisition. When rate-of-return study areas are merged with, consolidated with, or acquired by, another rate-of-return carrier, the new entity shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery.[21] In the case of a partial study area change, rate-of-return LECs shall allocate the Base Period Revenue and interstate revenue requirement levels of the partial study area based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area of the remaining entity.[22]

2. Setting New Rate Caps. Section 51.909(a)(7) of the Commission's rules is revised to establish procedures for setting new rate caps upon study area merger, consolidation or acquisition. For carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas.[23] For merging rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff and that have to establish a single switched access rate for a rate element, the new consolidated rate, as determined by NECA pursuant to the rate bands in its traffic-sensitive tariff, shall be the new rate cap if the merged entity's CAF Intercarrier Compensation (ICC) support will not increase as a result of the merger by more than two percent above the amount received by the merging entities prior to the transaction, using the demand and rate data for the preceding calendar year.[24] The rate for each rate band will become the rate cap for the corresponding rate element in the merged study area.[25]

3. Streamlined Waiver Petitions. Section 51.909(a)(7) of the Commission's rules also establishes a streamlined waiver process when certain conditions are met. If the new entity

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[17] *Id.* at 67-68, para. 152.

[18] *Id.* at 70, para. 159.

[19] *Id.* at 71, para. 160.

[20] *Id.* at 70-71, para. 159.

[21] *Id.* at 74, para. 169.

[22] *Id.*

[23] *Id.* at 74, para. 170.

[24] *Id.* at 75, para. 171.

[25] *Id.* at 75, para. 171.

participates in the NECA tariff and the impact of the rate banding increases CAF ICC support by more than two percent, the merging LECs must file a petition for waiver specifying the impact of the merger, acquisition, or consolidation on the new entity's rates and CAF ICC support.[26]

Any petition for waiver should include information such as:

- A description of the merging study areas, or portions of study areas involved;
- The intrastate and interstate switched access demand for each rate element;
- The relevant pre-and post-merger intrastate and interstate switched access rates for the study areas involved, as proposed;
- The relevant pre-and post-merger intrastate and interstate switched access revenues, including the effects of interstate switched access revenue pooling, for the study areas involved;
- The effect on CAF ICC resulting from the merger; and
- A brief statement of the public interest benefits of the merger.[27]

The Bureau will release a public notice announcing receipt of a waiver petition and seek comment.[28] The waiver will be deemed granted on the 60th day after the public notice is released if no opposition is filed, unless the Bureau or the Commission acts to prevent the "automatic" grant.[29] If an opposition is filed, the petition will not be eligible for the streamlined grant process and will instead be subject to the Commission's more general rules for waiver.[30]

C. Acquisition of Exchanges by a CAF Broadband Loop Support (BLS) Recipient (47 CFR § 54.902).

Only transferred exchanges that are already eligible for CAF BLS are eligible for CAF BLS after their transfers.[31] Where a rate-of-return carrier acquires exchanges from a price cap carrier, the acquired exchange will continue to be subject to the support obligations in place at the time that the exchange is acquired, including obligations associated with frozen and auction-based support.[32]

D. Study Area Boundary Waivers (47 CFR § 36.4).

LECs seeking a change in study area boundary must file a petition for waiver notwithstanding any prior exemptions from such waiver requests. The Bureau or the Office of Economics and Analytics are permitted to accept study area boundary corrections without a waiver.[33]

E. Quarterly Line Count Updates for CAF BLS Recipients (47 §§ 54.903(a)(2), 54.1305, 54.1306)).

CAF BLS support recipients can no longer submit optional quarterly line count filings.[34] Accordingly, when submitting the number of working loops for each study to the NECA for the purpose of determining the Eligible Expense Adjustment, each incumbent local exchange carrier that is a rate-of-

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[26] *Id.* at 75, para. 173.

[27] *Id.*

[28] *Id.* at 75-76, para. 174.

[29] *Id.* at 75-76, para. 174.

[30] *Id.* at 75-76, para. 174.

[31] *Id.* at 76-77, para. 175.

[32] *Id.*

[33] *Id.* at 77, para. 176.

[34] *Id.* at 79, para. 181.

return carrier not affiliated with price cap local exchange carriers no longer needs to update its information based on the information in the optional filing of quarterly line count data.[35] In addition, it cannot optionally update the other information submitted to NECA based on optional quarterly line count data.[36]

F. Relinquishment of Eligible Telecommunications Carrier (ETC) Designation (47 CFR § 54.205).

Any ETC (including recipients of only Lifeline support) designated by a state authority and seeking to relinquish its ETC designation after the effective date of this rule must provide advance notice to the Commission and must inform the Commission of the state's decision to permit or deny such relinquishment by submitting the relevant state order or other document issued by the state within 10 days of such issuance.[37] These notices must be filed regardless of whether the ETC is currently receiving support.[38]

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The rules adopted in the *Administrative Order* contain new and updated information collection requirements for recordkeeping and reporting associated with the receipt of universal service support, including high-cost support and to a much more limited extent, Lifeline-only support. The *Administrative Order* increases certain reporting obligations, including increased frequency of performance measure reports, a new process for accepting late-filed locations, and newly required notices of requests for, and grants of, relinquishment requests for state ETC designations (including Lifeline-only designations). It also modifies and clarifies certain report-related requirements by, for example, aligning certain deadlines and limiting the number of entities with which filings must be made. With the exception of the elimination of CAF-BLS support recipients' option to submit quarterly line count data, the *Administrative Order* does not eliminate reporting and record retention requirements currently applicable to ETCs, including the requirement to retain all records for at least 10 years from receipt of funding.[39] The details and specifics of the reporting and recordkeeping requirements adopted in the *Administrative Order* can be found in Section II of this guide under the Compliance Requirements.

IV. IMPLEMENTATION DATE

The rules and clarifications specified in the *Administrative Order* were effective May 10, 2024, except for those portions containing information collection requirements in sections 36.4, 54.205, 54.313(a)(2), (a)(3), (a)(6), (i), (j), 54.314(a) through (d), 54.316(a) through (d), 54.903(a)(2), and 54.1306 of the Commission's rules. These rules shall become effective after the Commission publishes a notice in the Federal Register of the Office of Management and Budget's approval of the Commission's rules, and the relevant effective date.

V. INTERNET LINKS

A copy of the *Administrative Order* is available at: https://docs.fcc.gov/public/attachments/FCC-23-87A1.pdf.

A copy of the Federal Register Summary of the *Administrative Order* is available at: https://www.federalregister.gov/documents/2024/04/10/2024-06292/connect-america-fund-alaska-connect-fund-etc-annual-reports-and-certifications-telecommunications

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[35] 47 CFR § 54.1305.

[36] *Id*. § 54.1306.

[37] *Administrative Order* at 79, para. 183.

[38] *Id.* at 80, para. 183.

[39] 47 CFR § 54.320(b).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1027
Released: October 2, 2024

APPLICATIONS AND PETITION FOR DECLARATORY RULING FILED IN CONNECTION WITH THE TRANSFER OF CONTROL OF WINDSTREAM HOLDINGS II, LLC AND UNITI GROUP INC. TO WINDSTREAM PARENT, INC.

PLEADING CYCLE ESTABLISHED

WC Docket No. 24-165

Comments/Petitions Due: November 1, 2024
Reply Comments/Oppositions to Petitions Due: November 18, 2024

By this Public Notice, the Wireline Competition Bureau and Office of International Affairs seek comment from interested parties on the applications filed pursuant to section 214 of the Communications Act of 1934, as amended (Act),[1] and sections 63.03-04, 63.18, and 63.24 of the Commission's rules[2] to transfer control of domestic section 214 authority and international section 214 authorizations from Windstream Holdings II, LLC (Windstream) and Uniti Group Inc. (Uniti, together with Windstream, Transferors) to a newly created company, Windstream Parent, Inc. (Transferee) (Transferors and Transferee collectively, Applicants).[3] Upon closing, the Transferee will be a publicly traded company[4] with anticipated disclosable interests held by investment funds affiliated with Elliott Investment Management, L.P. (together with its advisory affiliates, Elliott), and other investment funds managed, advised, or otherwise affiliated with Pacific Investment Management Company LLC (PIMCO).[5]

[1] 47 U.S.C. § 214.

[2] 47 CFR §§ 63.03-04, 63.18, 63.24.

[3] Windstream Holdings II, LLC and Uniti Group Inc. and Windstream Parent, Inc. Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 24-165, ITC-T/C-20240529-00097, ITC-T/C-20240529-00098, ITC-T/C-20240529-00099, ITC-T/C-20240529-00100 (filed Aug. 13, 2024) (Lead Application). The application file numbers and the Commission authorizations subject to the applications are listed in Attachment A to this Public Notice. The Lead Application was filed as a restated consolidated application, which made certain minor corrections and modifications to the Original Application filed on May 27, 2024. Windstream Holdings II, LLC and Uniti Group Inc. and Windstream Parent, Inc. Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 24-165 (filed May 27, 2024) (Original Application). The Applicants also filed applications for the transfer of control of wireless licenses under section 310(d) of the Act, and section 1.948 of the Commission's rules. 47 U.S.C. § 310(d); 47 CFR § 1.948. Those applications were placed on a Wireless Telecommunication Bureau accepted for filing public notice on May 29, 2024. *See* Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, Report No. 18671, Public Notice (WTB May 29, 2024).

[4] Lead Application at 1, n.3. The Applicants state that at closing of or shortly after the transactions described in this application, the Transferee's legal name is expected to be changed, and it will be traded under the ticker symbol UNIT. *Id.*

Windstream Parent, Inc., Windstream, and Uniti (together, Petitioners) also filed a petition for a declaratory ruling pursuant to section 310(b)(4) of the Act[6] and section 1.5000(a)(1) of the Commission's rules (Restated Petition),[7] requesting that the Commission find that it would serve the public interest to approve the foreign equity and voting interests in New Windstream Midco, the proposed controlling U.S. parent of several subsidiaries of Windstream and Uniti that hold common carrier wireless licenses,[8] above the 25% statutory benchmarks in section 310(b)(4) of the Act.[9]

Uniti, a publicly traded Maryland corporation, operates two primary businesses: Uniti Leasing and Uniti Fiber.[10] Uniti Leasing owns, acquires, and leases communications assets nationwide to wholesale customers on both exclusive and shared-tenant bases.[11] Its largest customer is Windstream.[12] Uniti Fiber is a provider of lit and dark fiber solutions for wireless operators, carriers, enterprises, schools, and governments.[13] Its business includes cell-site backhaul, small cells, internet services, and wavelengths.[14] Uniti Fiber's primary service area is in the Southeastern United States.[15] Between the two businesses, Uniti owns approximately 141,000 fiber route miles and 8.5 million fiber strand miles throughout the United States.[16] Eighteen Uniti subsidiaries—organized under the laws of Alabama, Delaware, Georgia and Louisiana—hold domestic section 214 authority.[17]

(Continued from previous page)

[5] Lead Application at 15-20, Exh. A (Organizational Charts).

[6] 47 U.S.C. § 310(b)(4).

[7] 47 CFR § 1.5001(a)(1).

[8] The subsidiaries of Windstream that hold common carrier wireless licenses are: BOB, LLC, D&E Communications, Inc., and Oklahoma Windstream, LLC (Common Carrier Fixed Point-to-Point Microwave service); Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest (Basic Exchange Telephone Radio Service, Common Carrier Fixed Point-to-Point Microwave, and Rural Radiotelephone); Windstream Services, LLC, Debtor-in-Possession (Upper Microwave Flexible Use Service); and Windstream Services, LLC (3.5 GHz Band Priority Access License). The subsidiaries of Uniti that hold common carrier wireless licenses are: Contact Network, LLC; Nexus Systems, LLC; Southern Light, LLC; and Uniti Fiber, LLC (Common Carrier Fixed Point-to-Point Microwave). Restated Petition, Annex 1.

[9] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Windstream Parent, Inc.; Windstream Holdings II, LLC; and Uniti Group Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, As Amended and Section 1.5001(a)(1) of the Commission's Rules, ICFS File No. ISP-PDR-20240524-00003, Petition for Declaratory Ruling (filed May 24, 2024). On August 13, 2024, the Petitioners filed a Restated Petition that provides additional foreign ownership information requested by Commission staff. Windstream Holdings II, LLC; and Uniti Group Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, As Amended and Section 1.5001(a)(1) of the Commission's Rules, ICFS File No. ISP-PDR-20240524-00003, Restated Petition for Declaratory Ruling (filed Aug. 13, 2024) (Restated Petition). The Petitioner filed a supplement to the Restated Petition on September 18, 2024 (Restated Petition Supplement).

[10] Lead Application, Attach. 1 at 1. As part of the transaction and subject to shareholder approval, Uniti plans to convert to a Delaware corporation shortly before closing. *Id.* at 3; Restated Petition at 3.

[11] Lead Application, Attach. 1 at 1; Restated Petition at 3.

[12] Lead Application, Attach. 1 at 1-2; Restated Petition at 3.

[13] Lead Application, Attach. 1 at 2; Restated Petition at 3.

[14] Lead Application, Attach. 1 at 2; Restated Petition at 2-3.

[15] Lead Application, Attach. 1 at 2; Restated Petition at 4.

[16] Lead Application, Attach. 1 at 2; Restated Petition at 4.

[17] Lead Application, Annex 1 at 4, Annex 2 at 4-7.

Windstream, a privately held Delaware limited liability company, through operating subsidiaries, provides fiber-based broadband to residential and small business customers in 18 states, managed cloud communications, networking and security services for mid-to-large enterprises and government entities across the U.S., and customized wavelength and dark fiber solutions for carriers, content providers, and others in the United States.[18] Windstream's incumbent local exchange carrier (LEC) operating subsidiaries offer services to residential, business, and government customers in 18 states.[19] Windstream's competitive LEC operating subsidiaries offer services primarily to enterprise business and government customers in all 50 states and the District of Columbia, such as software-defined wide area networking and unified communications as a service solutions to enable businesses to compete more effectively in the digital economy, and a variety of other data services, such as cloud computing, as well.[20] The Wireline Competition Bureau has authorized Windstream to receive $522,790,015.70 in Rural Digital Opportunity Fund (RDOF) Phase I (Auction 904) support to provide service to 192,501 locations in 18 states.[21]

Transferee is a newly formed Delaware corporation that will serve as the ultimate parent company of Windstream and Uniti after the transaction is completed.[22] Through its indirect ownership of those subsidiaries, the Transferee will indirectly hold the domestic section 214 authority and international section 214 authorizations and licenses of the respective subsidiaries of Uniti (Uniti Licensees) and Windstream (Windstream Licensees).[23]

In this proceeding, the Applicants and Petitioners seek approval for a multiple-step transaction in which, prior to closing the transaction and after approval by Uniti's shareholders, Windstream will conduct a *pro forma* internal reorganization, in connection with a repurchase of certain membership interests in the company, in which Windstream will merge into one of its subsidiaries.[24] A newly formed

[18] *Id.*, Attach. 1 at 2, Annex 2 at 4-7; Restated Petition at 2-3.

[19] Lead Application, Attach. 1 at 2. Windstream operates as an incumbent LEC in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. *Id.*; Restated Petition at 3.

[20] Lead Application, Attach. 1 at 2; Restated Petition at 3.

[21] *See* Lead Application, Attach. 1, 21-22 and Table 1; *see also Rural Digital Opportunity Fund Support Authorized for 2,521 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 & 10-90, Public Notice, 37 FCC Rcd 171, Attach. A (WCB/OEA 2022); *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 171, Attach A (WCB/OEA 2022); *Rural Digital Opportunity Fund Support Authorized for 2,521 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 & 10-90, Public Notice, 37 FCC Rcd 1617 (WCB/OEA 2022); *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 & 10-90, Public Notice, 37 FCC Rcd 4897; Historical Authorized Auction 904 Long-Form Applicants Data, https://www.fcc.gov/files/historical-authorized-auction-904-long-form-applicants-data. The states are Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. Lead Application at 1, Attach. 1 at 22. (Table 1). None of the Uniti Licensees receives Universal Service Fund high-cost support. *See id.*, Attach. 1 at 21 n.50.

[22] Lead Application, Attach. 1 at 3; Restated Petition at 1, n.4, 4.

[23] Lead Application, Attach. 1 at 3, 8 & Annex 1. Upon completion of the transaction, the Transferee, Uniti, and Windstream Licensees will be affiliated with three foreign carriers in Canada: Windstream New Edge, LLC; Intellifiber Networks, LLC; and McLeodUSA Telecommunications Services, LLC. Lead Application at 20-21; Restated Petition at 5.

[24] Lead Application, Attach. 1 at 8-9 & n.18; Restated Petition at 10. Uniti will also undergo certain *pro forma* changes, in anticipation of the merger, involving only intermediate entities and that are expected to occur shortly before closing. Lead Application, Attach. 1 at 8 n.15; *see also* Lead Application, Exh. A (Post-Transaction Organizational Charts); Restated Petition at 1 n.2, 10.

subsidiary, New Windstream, LLC, a Delaware limited liability company (New Windstream) will then become the ultimate parent of the Windstream Licensees.[25] To effectuate closing of the transaction, New Windstream will merge into the Transferee, with the Transferee surviving.[26] Then, Uniti will merge into a newly formed subsidiary of the Transferee, with Uniti surviving.[27] As a result, both the Windstream Licensees and the Uniti Licensees will become indirect subsidiaries of Transferee.[28]

Both Uniti's pre-closing shareholders and Windstream's pre-closing members will receive common equity in the Transferee, with Windstream's pre-closing members also receiving consideration for their equity in Windstream in the form of cash, preferred equity, and warrants.[29] After the proposed transaction and exercise of all warrants of the Transferee issued at closing, Uniti's pre-closing shareholders will hold, in aggregate, approximately 57.68%, and Windstream's pre-closing equity holders approximately 42.32%, of the common stock in Transferee, assuming exercise of all warrants.[30]

Following consummation of the transaction, disclosable interests will be held by investment funds affiliated with Elliott, and other investment funds affiliated with PIMCO.[31] Two Elliott Funds currently hold disclosable interests in Windstream and will hold disclosable interests in Transferee: Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P. (EILP), a Cayman Islands exempted limited partnership.[32] Elliott's interests in the Transferee will indirectly and ultimately be held by Elliott Asset Management LLC, Braxton Associates, Inc., and Elliott Advisors GP LLC.[33] Paul Singer, a U.S. citizen, is the Managing Member, Controlling Shareholder, and Sole Member, respectively, of these entities.[34] Collectively, the Applicants and Petitioners estimate that funds managed by Elliott will hold up to a combined 27.42% of the publicly traded stock in the Transferee following the transaction.[35]

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[25] Lead Application, Attach. 1 at 8.

[26] *Id.*, Attach. 1 at 10; Restated Petition at 1 n.2.

[27] Lead Application, Attach. 1 at 10.

[28] *Id.*; *see id.*, Exh. A (Organizational Charts); Restated Petition at 4.

[29] Lead Application, Attach. 1 at 10. Elliott has agreed to ensure that funds managed by Elliott will collectively hold less than 50% of the outstanding units after the rights offering concludes by committing to exchange any common units in the company for warrants as needed to keep both the Elliott Funds' collective ownership and the PIMCO Funds' collective ownership below 50% after reduction in the number of outstanding units. *Id.*, Attach. 1 at 9. According to the Applicants, the rights offering and equity repurchase are structured to ensure compliance with this ruling by ensuring that no foreign investor will acquire a majority of equity, voting, or economic interest as a result. *Id.*, Attach. 1 at 9 n.18; Restated Petition at 5.

[30] Lead Application, Attach. 1 at 10.

[31] *Id.* at 15-20, Exh. A (Organizational Charts); Restated Petition at 12-15, Annex 2.

[32] Lead Application, Attach. 1 at 4. The Elliott Funds hold a non-controlling interest greater than 10% in GoTo Technologies USA Inc., which (along with affiliates) offers software as a service (SaaS) and cloud-based remote work tools. *Id.*, Annex 2 at 1-2; Restated Petition at 6-7, Annex 2 (Post-Transaction Organizational Charts) at 3-4. According to the Restated Petition, "[i]nvestment funds managed by Elliott Investment Management, L.P. are collectively referred to as the "Elliott Funds" for purposes of this [restated] petition." Restated Petition at 7, n.18.

[33] Lead Application, Attach. 1, Exh. A (Organizational Charts — Post-Transaction Elliott Upper Structure); Restated Petition at 10, Annex 2 Post-Transaction Organizational Charts at 4 (Post-Transaction Elliott Upper Structure).

[34] Lead Application, Attach. 1, Exh. A (Organizational Charts — Post-Transaction Elliott Upper Structure); Restated Petition at 9 n.3, 10, Annex 2 Post-Transaction Organizational Charts at 4 (Post-Transaction Elliott Upper Structure).

[35] Lead Application, Attach. 1 at 6; Restated Petition Annex 2 Post-Transaction Organizational Charts at 1,3, Annex 3.

PIMCO is a Delaware limited liability company and investment entity.[36] Certain funds and accounts managed, advised, or sub-advised by PIMCO (PIMCO Funds) hold approximately 21% of the equity in Windstream.[37] As a result of the rights offering and repurchase of membership units by Windstream prior to the merger of Windstream and the Transferee, the collective ownership of Windstream by the PIMCO Funds will increase to approximately 49.83% equity and 49.83% voting based upon present ownership, and up to 29.35% equity on an as-exercised basis considering warrants.[38] PIMCO's interests in the Transferee will indirectly and ultimately be held by Allianz SE, a European Company (SE) of German citizenship.[39] According to the Applicants, due to Windstream's governance structure and limitations on the power of members in its limited liability company agreement, this increase in PIMCO Funds' relative ownership of Windstream common units will not confer any actual control upon the PIMCO Funds or PIMCO over the governance or management of the company.[40] Following the transaction, no individual PIMCO Fund will control more than 5% of the Transferee, and funds and accounts managed, advised, or sub-advised by PIMCO will hold up to a combined 11.81% of the publicly traded stock in the Transferee following the transaction.[41]

The Applicants and Petitioners assert that a grant of the applications and Restated Petition will serve the public interest, convenience, and necessity.[42] The Applicants assert that the transaction will enable them to move forward with an increased capability to compete to bring advanced services to consumers and businesses across the country.[43] According to the Applicants, the combination of Uniti's fiber-optic network and wholesale operations and Windstream's primarily last-mile, retail business focus

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[36] Lead Application, Attach. 1 at 6; Restated Petition at 8.

[37] Lead Application, Attach. 1 at 6. The PIMCO Funds hold a non-controlling interest greater than 10% in Intelsat, which (along with its affiliates) operates communications satellites and provides satellite-delivered services. *Id.*, Annex 2 at 2; Restated Petition at 8.

[38] Lead Application, Attach. 1 at 7; Restated Petition at 9.

[39] Lead Application, Attach. 1, Exh. A (Organizational Charts — PIMCO Ownership Structure - Post Transaction); Restated Petition at 8.

[40] Lead Application, Attach. 1 at 7; Restated Petition at 8-9. The Restated Petition states that "Allianz SE has no control over the day-to-day operations or financial decisions made by PIMCO. Each fund is typically led by two or more portfolio managers, who are ultimately responsible for deciding when stocks or other investment interests are purchased, held, or sold and in what amounts, with some additional layers of guidance and support. However, neither PIMCO nor its portfolio managers engage in the day-to-day management or operations of Windstream." Restated Petition at 8-9.

[41] Lead Application at 19, Attach. 1 at 7, Exh. A (Organizational Charts). According to the Restated Petition, "[a]s a result of the rights offering that Windstream plans to conduct prior to closing of the transaction, funds and accounts managed, advised, or sub-advised by PIMCO are expected to hold up to approximately 49.83 percent equity and voting interest in Windstream, although this interest will be diluted to 29.45 percent counting warrants on an as-exercised basis." Restated Petition at 9. The Petitioners further state that "[a]s a result of the reduction in the number of outstanding Windstream common units, the equity held by one PIMCO fund—the PIMCO Funds: Global Investors Series plc, Income Fund, which is organized in Ireland—will increase to a 5.39 percent equity interest in New Windstream. Additionally, during this period, PIMCO Funds: PIMCO Income Fund's equity will increase to 13.66 percent. This fund is organized in the United States, by waiver of its voting rights its actual voting percentage will not exceed 4.99 percent. Once the transactions contemplated by this application are complete, the equity and voting rights of both of these funds in Transferee will be below 5 percent." Restated Petition at 9, n.26.

[42] Lead Application, Attach. 1 at ii, 12-13, 26. According to the Petitioners, "the foreign ownership interests do not pose any threat to the public interest. The stakeholders with significant non-U.S. ownership are not foreign-organized telecommunications service providers, but financial investors, including broadly held mutual funds, private investment funds, pension funds, and similar entities that are investing in Transferee for the primary purpose of seeking a financial return." Restated Petition at 22.

[43] Lead Application, Attach. 1 at ii, 13-17.

will enhance the Applicants' competitive position in both markets.[44] They believe that bringing together Windstream's retail business with Uniti's fiber-based distribution network—which Windstream utilizes as an arms-length tenant today—will reduce friction and free up both Applicants to focus on competing in the highly competitive fiber marketplace, including by enabling the combined company to drive fiber deeper into its network, reaching the customer premises.[45] The Applicants contend that combining the companies' respective network assets will also allow them to realize network and operational synergies, as well as economies of scale necessary to compete in the increasingly competitive fiber marketplace, while also reducing risk and expanding access to capital by diversifying the combined company's revenue stream.[46] At the same time, the Applicants argue that the transaction will not result in competitive or other harms that would be contrary to the public interest.[47]

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

The Petitioners request that the Commission find that it would serve the public interest to approve the foreign equity and voting interests in New Windstream Midco, LLC, the proposed controlling U.S. parent of both of the Uniti and Windstream common carrier wireless licensees (collectively, the Common Carrier Wireless Licensees),[48] in excess of the 25% statutory benchmarks in section 310(b)(4) of the Act.

On June 2, 2023, the Commission granted a petition for a declaratory ruling filed by Windstream Holdings, its members, and its common carrier licensee subsidiaries (2023 Petitioners) requesting approval to exceed the foreign ownership benchmarks in section 310(b)(4) of the Act.[49] The *2023 Declaratory Ruling* authorized 100% aggregate foreign ownership of Windstream Holdings, as the proposed controlling U.S. parent of the Windstream common carrier wireless licensees,[50] and granted specific and advance approval of certain foreign individuals and entities, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.[51] The *2023 Declaratory Ruling* was also

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*, Attach. 1 at ii, 17-20.

[48] *See supra* note 8. In the Restated Petition Supplement, Petitioners provide additional information to treat New Windstream Midco, LLC, rather than its parent company Windstream Parent, Inc., as the controlling U.S. parent of the licensees that are the subject of the Restated Petition. Petitioners further state that "the ownership interests reflected in the revised annexes do not differ from those previously reflected, except that New Windstream Topco, LLC and Windstream Parent, Inc. have been added to the disclosures and the entities previously disclosed as direct and indirect interest holders of Windstream Parent, Inc. are now disclosed as indirect interest holders of New Windstream Midco, LLC." *See* Restated Petition.

[49] Grant of Windstream Holdings II, LLC Petition for Declaratory Ruling, Public Notice, ISP-PDR-20201021-00010 and ISP-AMD-20230330-00005, 38 FCC Rcd 5084 (2023) (*2023 Declaratory Ruling*).

[50] The common carrier wireless licensees in the *2023 Declaratory Ruling* did not include the Uniti licensees.

[51] 47 CFR § 1.5004. Grant of the *2023 Declaratory Ruling* was also conditioned on the 2023 Petitioners filing annual certifications with the Commission stating that the 2023 Petitioners are in compliance with the Commission's foreign ownership rules. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. ISP-PDR-20201021-00010 and ISP-AMD-20230330-00005 (filed Apr. 27, 2023) (Annual Certification Agreement Letter) ("Windstream acknowledges that it is subject to Section 310(b) of the Act, Section 1.5000-1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling, including the requirement to obtain prior approval under Section 1.5004 of the Commission's rules. For as long as Windstream is structured as a limited liability company, Windstream commits to monitor its ownership and file with the Commission an annual certification each year, as of the date of grant of the declaratory ruling, stating that it remains in compliance with Section 310(b) of the Act, Sections 1.5000-1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling. This certification

(continued….)

conditioned on compliance with the January 18, 2023 Letter of Agreement (2023 LOA) from Windstream Holdings to U.S. Department of Justice, U.S. Department of Defense, and U.S. Department of Homeland Security.[52]

Now, the Petitioners are seeking a new declaratory ruling because after the proposed transaction there will be new foreign interest holders.[53] Further, New Windstream Midco, LLC will become the new controlling U.S. parent of the Common Carrier Wireless Licensees with the addition of the Uniti common carrier wireless licensees.

Post-Closing Ownership

Pursuant to the proposed transaction, through a series of transactions described above, Windstream and Uniti will both become subsidiaries of the Transferee, a corporation organized under the laws of Delaware that will be publicly traded.[54] According to the Restated Petition, stock in the Transferee will be held by a combination of the pre-closing shareholders of Uniti and pre-closing equity interest holders of Windstream, with pre-closing Windstream equity interest holders also receiving cash and preferred equity and warrants in the Transferee.[55] The Petitioners state that before giving effect to the exercise of the Transferee's warrants to purchase common stock, Uniti's equity holders will hold, in the aggregate, approximately 62% of the common equity of Transferee, and Windstream's pre-closing equity holders will hold, in the aggregate, approximately a 38% in the Transferee.[56] The Petitioners further state that the Windstream pre-closing equity holders will also receive warrants to purchase the Transferee's common stock in an aggregate amount equal to approximately 6.9% of the Transferee's common stock.[57] According to the Restated Petition, the warrants may not be exercised before the third anniversary of the

(Continued from previous page)
will be filed in accordance with Section 1.16 of the Commission's rules and subscribed to as true under penalty of perjury. Windstream shall file the annual certifications in ICFS File Nos. ISP-PDR20201021-00010 and ISP-AMD-20230330-00005. If Windstream is not in compliance with Section 310(b) of the Act, Sections 1.5000- 1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling, it agrees to notify the Commission within fifteen (15) calendar days after discovery of such non-compliance."). On June 3, 2024, the Petitioners filed an annual certification. Letter from Nicole Winters, Senior Director-Regulatory Counsel to Windstream, to Marlene H. Dortch, Secretary, FCC, ICFS file Nos. ISP-PDR-20201021-00010 and ISP-AMD-20230330-00005 (filed Jun. 3, 2024).

[52] *2023 Declaratory Ruling* at 2,12, 17; National Telecommunications and Information Administration (NTIA), Petition to Adopt Conditions to Authorizations and Licenses, ICFS File No. ISP-PDR-20201021-00010 (filed Feb. 3, 2023) (citing Letter of Agreement from Tony Thomas, President & Chief Executive Officer Windstream Holdings II, LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division; and Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, United States Department of Homeland Security; and Global Investment and Economic Security Directorate, Director Undersecretary of Acquisition and Sustainment, United States Department of Defense (dated Jan. 18, 2023) (Windstream LOA)). The NTIA filing attaches a copy of the Windstream LOA.

[53] Restated Petition at 4-6. The new foreign interest holders that hold more than 5% equity and/or voting interests include: Devonian II ICAV Sub-Fund I; Nexus Aggregator (Offshore) L.P.; Nexus Aggregator SLP I-A, Ltd.; Hambledon, Inc.; Elliott Special International GP, LLC.

[54] *Id.* at 4-5 (citing to Uniti Group Inc., Deutsche Bank, 32nd Annual Media, Internet & Telecom Conference (Mar. 12, 2024), https://investor.uniti.com/static-files/4f0a0700-c2ed-4f89-9a5c-d4fe2a585b12).

[55] *Id.* at 5.

[56] *Id.*

[57] *Id.*

closing of the transaction, and holders of the warrants are entitled to participate in certain distributions but are not entitled to voting rights.[58]

The Petitioners further state that on an as-exercised basis including warrants in the Transferee issued at closing and after preferred equity dilution, pre-closing Windstream equity interest holders will account for approximately 42.32% of the Transferee's ownership and pre-closing Uniti shareholders will hold the remaining 57.68%.[59] Further, according to the Restated Petition, Elliott will introduce two additional foreign intermediate holding companies through which Elliott International Limited, a Cayman Islands exempted company, and EILP will hold their indirect interests in the Transferee: Devonian II ICAV Sub-Fund I (Devonian), a collective asset-management vehicle organized in Ireland and wholly owned by EILP, and Nexus Aggregator (Offshore) LP (Nexus Offshore), a limited partnership organized in the Cayman Islands and wholly owned by Devonian.[60] Upon closing, EILP will hold its entire interest in the Transferee indirectly through Devonian, which will, in turn, hold almost its entire interest in Transferee indirectly through Nexus Offshore, with a small portion also held through the Cayman Islands-organized vehicle, Nexus Aggregator SLP I-A, Ltd.[61]

Nexus Offshore, in turn, will hold its interest in the Transferee directly, and indirectly through Nexus Aggregator L.P. and Nexus Aggregator II L.P.[62] Specifically, Nexus Offshore will directly hold the Transferee's stock resulting from the conversion of EILP's existing Uniti stock to the Transferee stock; will hold through Nexus Aggregator L.P. the Transferee stock, preferred equity, and warrants resulting from the conversion of EILP's existing indirect holding of Windstream equity interest units; and will hold through Nexus Aggregator II LP the Transferee stock, preferred equity, and warrants resulting from the conversion of EILP's warrants in Windstream acquired through the rights offering.[63] According to the Restated Petition, post-transaction, EILP, Elliott International Limited, Devonian, Nexus Offshore, Hambledon, Inc. (Cayman islands) and Elliott Special International GP, LLC (Cayman Islands) will also hold indirect, insulated, equity interests in warrants exercisable for up to an approximate aggregate of 3.31% common stock in the Transferee.[64]

According to the Restated Petition, upon completion of the proposed transaction, New Windstream Midco, LLC, the proposed controlling U.S. parent, would have aggregate indirect foreign equity and voting interests of 30.48% as an indirect wholly owned subsidiary of the Transferee.[65] The Petitioners request that the Commission grant a declaratory ruling permitting foreign investors to own aggregate 100% equity and voting interests directly in the Transferee and indirectly in New Windstream Midco, LLC, the proposed controlling U.S. parent.[66]

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[58] *Id.* at 5,11.

[59] *Id.* at 11.

[60] Restated Petition at 11.

[61] *Id.*

[62] *Id.* at 11-12.

[63] *Id.* at 12.

[64] *Id.* at 13, n.35.

[65] *Id.* Annex 3.

[66] Restated Petition at 2, 24.

Pursuant to section 1.5001(i) of the Commission's rules,[67] the Petitioners request that the Commission specifically approve the indirect foreign equity and/or voting interests that would be held in the proposed controlling U.S. parent, New Windstream Midco, LLC, upon completion of the proposed transaction by foreign-organized entities and foreign individuals as follows: [68]

Elliott Investment Management, L.P.
Elliott International, L.P. (18.67% equity; deemed 18.67% voting) (Cayman Islands);
Elliott International Limited (18.67% equity; deemed 18.67% voting) (Cayman Islands);
Devonian II ICAV Sub-Fund I (18.67% equity; deemed 18.67% voting) (Ireland);
Nexus Aggregator (Offshore) L.P. (18.67% equity; deemed 18.67% voting) (Cayman Islands);
Nexus Aggregator SLP I-A, Ltd. (0.20% equity; deemed 18.67%) (Cayman Islands);
Hambledon, Inc. (0% equity; deemed 18.67% voting) (Cayman Islands); and
Elliott Special International GP, LLC (0% equity; deemed 18.67%) (Cayman Island).

Pacific Investment Management Company LLC
Allianz Asset Management GmbH (0% equity; 11.81% voting) (Germany);
Allianz Europe B.V. (0% equity; 11.81% voting) (Netherlands); and
Allianz SE (0% equity; 11.81% voting) (Germany).

The Petitioners also request advance approval, pursuant to section 1.5001(k) of the Commission's rules,[69] for each of the above foreign-organized entities to increase their indirect equity and/or voting interests in New Windstream Midco, LLC up to a non-controlling 49.99%.[70]

The Petitioners assert that the public interest would be served by granting the Restated Petition.[71]

Executive Branch Review

Through this Public Notice, pursuant to Commission practice, the applications and Restated Petition are being referred 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 and Petitioners.[72]

GENERAL INFORMATION

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

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[67] 47 CFR § 1.5001(i).

[68] Restated Petition at 20-21.

[69] 47 CFR § 1.5001(k).

[70] Restated Petition at 21.

[71] *Id.* at 21-24.

[72] *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* Report and Order, 35 FCC Rcd 10927 (2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

Interested parties may file comments/petitions and reply comments/oppositions 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.

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

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

1) Christi Shewman, Wireline Competition Bureau, christi.shewman@fcc.gov;
2) Fara Mohsenikolour, Office of International Affairs, fara.mohsenikolour@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their

initial filings. New issues may not be raised in responses or replies.[73] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Christi Shewman, Wireline Competition Bureau, (202) 418-0646; or Fara Mohsenikolour, Office of International Affairs, (202) 418-1429.

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[73] *See* 47 CFR § 1.45(c).

ATTACHMENT A

SECTION 214 AUTHORIZATIONS

A. International

The applications for consent to the transfer of control of certain international section 214 authorizations have been assigned the file numbers listed below.

File Number	Authorization Holder	Authorization Number
ITC-T/C-20240529-00097	Windstream Services, LLC	ITC-214-19980925-00658[74]
ITC-T/C-20240529-00098	Uniti Fiber GulfCo LLC	ITC-214-20240419-00065
ITC-T/C-20240529-00099	Hunt Telecommunications LLC	ITC-214-20140114-00010
ITC-T/C-20240529-00100	Uniti Fiber LLC	ITC-214-20160509-00152

B. Domestic

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction. In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.[75]

PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

The Petition has been assigned File No. ISP-PDR-20240524-00003.

SECTION 310(d) APPLICATIONS[76]

File Number	Licensee	Lead Call Sign
0011084397	Uniti Fiber LLC	WQNQ285
0011084405	Contact Network, LLC	WQQB654
0011084413	Nexus Systems, LLC	WQJI214
0011084916	Southern Light, LLC	WQNJ504

[74] In Annex 2 of the Restated Application, the Applicants list 57 wholly owned subsidiaries of Windstream Services, LLC that provide international service under the authority held by Windstream Services, LLC, ITC-214-19980925-00658, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h). Restated Statement at 4, Annex 2.

[75] 47 CFR § 63.03.

[76] The Applicants also filed applications for the transfer of control of wireless licenses under section 310(d) of the Act, and section 1.948 of the Commission's rules. 47 U.S.C. § 310(d); 47 CFR § 1.948. -Those applications were placed on a Wireless Telecommunication Bureau's accepted for filing public notice on May 29, 2024. *See* Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, Report No. 18671, Public Notice (WTB May 29, 2024).

0011087831	D&E Communications, Inc.	WQJH937
0011087837	Oklahoma Windstream, LLC	KPP33
0011087852	Windstream Services, LLC	WRLA665
0011087861	Windstream Services LLC, Debtor-In-Possession	WREU275
0011084618	BOB, LLC	WQCC512
0011087844	Valor Telecommunications of Texas, LLC	KKK59

PUBLIC NOTICE

Federal Communications Commission
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DA 24-1028
Released: October 2, 2024

WTB AND PSHSB EXTEND FILING AND REGULATORY DEADLINES IN ADDITIONAL AREAS AFFECTED BY HURRICANE HELENE

By this Public Notice, the Wireless Telecommunications Bureau (WTB) and Public Safety and Homeland Security Bureau (PSHSB) apply our extended filing and regulatory deadlines[1] to the additional affected counties which are experiencing damage due to Hurricane Helene. Therefore, pursuant to our authority to waive rules for good cause[2] and to alleviate any additional burden that may be caused by our filing requirements and regulatory deadlines, we hereby extend certain deadlines occurring from September 23, 2024, to October 28, 2024, for affected licensees and applicants in the affected areas.

For the purposes of the relief we grant today, we define "affected areas" as the State of Florida, and the Georgia, North Carolina, South Carolina, Tennessee, and Virginia counties designated by the Federal Communications Commission's Disaster Information Reporting System (DIRS) at any time from September 25, 2024 through October 2, 2024.[3] In this context, "affected" licensees and applicants include those licensees and applicants that operate facilities, or, in a significant manner essential to the business or public safety operation, rely on personnel, records, or financial institutions located in the affected areas to provide services or to conduct substantial business activities with the Commission.

(1) For affected licensees and applicants, we extend until October 29, 2024, any deadlines currently set within the period from September 23, 2024, to October 28, 2024, inclusive, with respect to Wireless Radio Service[4] applications, notifications, and reports pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules,

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[1] *WTB and PSHSB Extend Filing and Regulatory Deadlines in Areas Affected by Hurricane Helene*, Public Notice, DA 24-1011 (WTB/PSHSB Sept. 27, 2024).

[2] 47 CFR § 1.3. In light of the significant damage caused by this hurricane and the associated impact on affected licensees and applicants, we find that it would be unduly burdensome to require affected licensees and applicants to continue to meet the filing requirements and regulatory deadlines extended herein, and that good cause exists to grant this extension.

[3] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina*, Public Notice, DA 24-991 (PSHSB Sept. 25, 2024) (initial list of affected counties); *The Federal Communications Commission Announces The Expansion of The Disaster Information Reporting System and The Mandatory Disaster Response Initiative For Communications Impacted By Hurricane Helene*, Public Notice, DA 24-1015 (PSHSB Sept. 27, 2024) (adding additional counties); *The Federal Communications Commission Narrows The Scope of The Disaster Information Reporting System and The Mandatory Disaster Response Initiative for Communications Impacted by Hurricane Helene*, Public Notice, DA 24-1021 (PSHSB Sept. 30, 2024) (narrowing the scope of affected counties). Our relief today is independent of the September 30 PSHSB Public Notice and all counties that were identified in the September 27 joint Public Notice remain eligible for extended deadlines.

[4] *Wireless Radio Services*. All radio services authorized in Parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of the Commission's rules, whether commercial, private, or public safety in nature.

including, but not limited to, filings regarding certain minor[5] license modifications, license renewals, and notifications of construction. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of Hurricane Helene,[6] extension requests, or to pay individual waiver fees.[7]

(2) For affected licensees and applicants, we extend until October 29, 2024 all construction deadlines and other regulatory deadlines currently set within the period from September 23, 2024, to October 28, 2024, inclusive, applicable to Wireless Radio Services pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane.[8] Pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.

Special Temporary Authority (STA) and Waiver Requests. We also waive section 1.931(a) of the Commission's rules through October 28, 2024, to allow the filing of STA requests for Wireless Radio Services in manners other than electronically on FCC Form 601, *e.g.*, by requesting STAs by telephone call to Commission staff.[9] Further, because the President has issued an emergency declaration for the affected region, all STA filings by affected licensees and applicants related to Hurricane Helene will be considered "emergency filings" pursuant to section 1.915(b) of the Commission's rules[10] and will be processed as expeditiously as possible. Affected licensees and applicants must include a certification that the STA or waiver request is in response to Hurricane Helene. To file STA and waiver requests via email, or to request an STA orally, licensees and applicants may contact the following personnel:

- For WTB Licensees and Applicants:
    - Parts 22, 24, 27 (excluding 600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service), Keith Harper, 202-418-2759, Keith.Harper@fcc.gov.
    - Parts 80, 87, 90 (excluding Public Safety), 95, and 97, Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov.

[5] *See* 47 CFR § 1.947(b). We waive the requirement to notify the Commission within 30 days of making a minor modification.

[6] To allow the WTB and (PSHSB to process filings submitted through the Universal Licensing System (ULS) as expeditiously as possible, an "Attachment Type" has been created in ULS called "Hurricane/Wildfire Relief." This Attachment Type must be used to upload and attach to a filing a certification that states, "under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane." To provide the required certification, licensees and applicants should upload a file with the certification, select Attachment Type "Hurricane/Wildfire Relief," and enter "Hurricane Relief Certification" in the File Description field on the Attachment Screen. Following this process will allow you to submit a filing without paying waiver fees. Normal application fees still apply.

[7] The FCC does not assess filing fees for Public Safety applicants and licensees.

[8] *See supra* note 6 for instructions to file this certification.

[9] 47 CFR § 1.931(a).

[10] *Id.* § 1.915(b).

- Parts 27 (600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service); Part 30; Part 74 (excluding Subparts G and L); and Part 101 (excluding Public Safety): Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov.
- For more information and instructions for filing emergency STA and waiver requests with WTB, please consult the WTB Special Temporary Authority and Waiver Request Filing Guide, available at https://www.fcc.gov/research-reports/guides/wtb-special-temporary-authority-and-waiver-request-filing-guide.

- For PSHSB Licensees and Applicants:
  - Parts 90 & 101 (Public Safety): Tracy Simmons, (717) 338-2657, Tracy.Simmons@fcc.gov. In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STAs can call the FCC's Operation Center, which is open 24 hours a day, 7 days a week, at (202) 418-1122 or by email at FCCOPS@fcc.gov.

Operation During Emergencies. We remind licensees that sections 22.307, 90.407, and 101.205 of the Commission's rules address operation during periods of emergency for licensees authorized under these rule parts.[11] These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

We also remind applicants for Antenna Structure Registration (ASR) that facilities meeting the criteria for the replacement tower exception or temporary tower exception under the Commission's National Environmental Policy Act rules do not have to complete the environmental notification process prior to completing their ASR applications.[12] For facilities not subject to an exception, the Commission may waive or postpone the environmental notification process at the request of the applicant and upon an appropriate showing of an emergency situation.[13] Requests to waive or postpone the environmental notification process may be submitted with ASR applications by completing the waiver question in the ASR system to indicate that the applicant is requesting a waiver of the Commission's rules for environmental notice, and attaching a request for waiver that includes a showing of the emergency basis for the request, e.g., that the proposed tower will be used to restore service in an area affected by Hurricane Helene.

Priority Review by WTB and PSHSB. Finally, we remind affected licensees and applicants that they can also file waiver requests for relief not covered by the Public Notice. To facilitate the rapid restoration of communications infrastructure and services, WTB and PSHSB will give priority to the review of waiver filings by affected licensees and applicants related to Hurricane Helene.

By the Chief, Wireless Telecommunications Bureau and the Chief, Public Safety and Homeland Security Bureau.

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[11] *Id.* §§ 22.307, 90.407, 101.205.

[12] *Id.* § 17.4(c)(1)(iv), (c)(1)(vii).

[13] *See National Environmental Policy Act Compliance for Proposed Tower Registrations*, *Effects of Communications Towers on Migratory Birds*, WT Docket Nos. 08-61, 03-187, Order on Remand, 26 FCC Rcd 16700, 16717, para. 43 n.117 (2011).

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7142294
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: October 1, 2024 **Released: October 2, 2024**

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider the complaint[1] 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.[2] We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[3] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[4] 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.[5] The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.[6]

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[1] *See* Informal Complaint No. 7142294 (filed Jul. 8, 2024).

[2] *See* 47 CFR §§ 64.1100 – 64.1190.

[3] 47 U.S.C. § 258(a).

[4] *See* 47 CFR § 64.1120.

[5] *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.

[6] These rules require the 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

(continued…)

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization. Pursuant to our rules, we notified Clear Rate of the complaint.[7] The carrier change to Clear Rate pertains to Clear Rate's VoIP (voice over Internet Protocol) service.[8] The Commission's carrier change rules have not been extended to VoIP service.[9] Thus, based on the evidence in the record, we conclude that Clear Rate actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[10]

4. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS DENIED.

5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

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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.

[7] *Id.* § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id*. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[8] *See* Clear Rate Response to Informal Complaint No. 7142294 (filed Jul. 11, 2024).

[9] *See generally* 47 C.F.R. §§ 64.1100(b)(d). We note that the Commission has sought comment on whether it is necessary to extend slamming regulations to VoIP or other IP-enabled service providers. *See Enabled Services,* WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11 paras. 71-72 (2004).

[10] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of such 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 such Complainant. *See id.* § 1.719.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7292697
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: October 1, 2024 **Released: October 2, 2024**

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider the complaint[1] 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.[2] We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[3] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[4] 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.[5] The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.[6]

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[1] *See* Informal Complaint No. 7292697 (filed Sep. 9, 2024).

[2] *See* 47 CFR §§ 64.1100 – 64.1190.

[3] 47 U.S.C. § 258(a).

[4] *See* 47 CFR § 64.1120.

[5] *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.

[6] These rules require the 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

(continued…)

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.[7] Pursuant to our rules, we notified Clear Rate of the complaint.[8] The carrier change to Clear Rate pertains to Clear Rate's VoIP (voice over Internet Protocol) service.[9] The Commission's carrier change rules have not been extended to VoIP service.[10] Thus, based on the evidence in the record, we conclude that Clear Rate's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[11]

4. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS DENIED.

5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

D. Zachary Champ
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

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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.

[7] *See* Informal Complaint No. 7292697 (filed Sep. 9, 2024). We note that Complainant alleged misrepresentation occurred during Clear Rate sale's call. Complainant states that "Clear Rate called my home and posed as Brightspeed,…without authorization they ported my number."

[8] *Id.* § 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).

[9] *See* Clear Rate Response to Informal Complaint No. 7292697 (filed Sep. 12, 2024).

[10] *See generally* 47 C.F.R. §§ 64.1100(b)(d). We also note that the Commission has sought comment on whether it is necessary to extend slamming regulations to VoIP or other IP-enabled service providers. *See Enabled Services,* WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11 paras. 71-72 (2004).

[11] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of such 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 such Complainant. *See id.* § 1.719.

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

In the Matter of	)	
	)	
Incarcerated People's Communications Services;	)	WC Docket No. 23-62
Implementation of the Martha Wright-Reed Act	)	
	)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services	)	

ORDER DENYING STAY PETITION

Adopted: October 2, 2024 **Released: October 2, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On September 26, 2024, Securus Technologies, LLC (Securus) filed a petition requesting that the Commission stay its Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking in the captioned proceedings pending judicial review.[1] For the reasons discussed below, we deny Securus's stay request.

II. BACKGROUND

2. The *2024 IPCS Order* implemented the expanded authority granted to the Commission by the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act),[2] adopting comprehensive reforms that will significantly reduce the financial burdens incarcerated people face to communicate with their loved ones. The Act amended the Communications Act of 1934, as amended, (Communications Act) to require that the Commission "establish a compensation plan to ensure that all [Incarcerated People's Communications Services (IPCS)] providers are fairly compensated and all rates and charges are just and reasonable for completed" IPCS communications.[3] Consistent with this Congressional mandate, in the *2024 IPCS Order*, the Commission reduced existing per-minute rate caps for all incarcerated people's audio communication services, and established, for the first time,

[1] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (rel. July 22, 2024) (*2024 IPCS Order* or *Order*, *2024 IPCS Reconsideration Order*, or *2024 IPCS Notice*); *see* Securus Technologies, LLC, Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Sept. 26, 2024) (Securus Stay Petition); Declaration of Alex Dougherty In Support of Securus Technologies, LLC's Motion for Stay Pending Appeal, WC Docket Nos. 23-62, 12-375 (filed Sept. 26, 2024) (Dougherty Declaration). The Wright Petitioners, United Church of Christ Media Justice Ministry, Worth Rises, Pennsylvania Prison Society, and the Brattle Group (collectively, the Public Interest Parties) filed an opposition to the Securus Stay Petition as did Stephen A. Raher. *See* Opposition to Securus Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 1, 2024) (Public Interest Parties Opposition); Opposition of Stephen A. Raher to Securus Technologies' Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 1, 2024) (Stephen Raher Opposition).

[2] Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2022).

[3] 47 U.S.C. § 276(b)(1)(A).

interim per-minute rate caps for incarcerated people's video communications services.[4] In establishing these rate caps, the Commission employed the used and useful framework it has used for decades in determining just and reasonable rates, a zone of reasonableness methodology that it had previously used to set rate caps for audio IPCS, and an industry-average cost methodology specifically permitted in the Martha Wright-Reed Act.[5] In setting the new rate caps, the Commission relied on cost and other data submitted by IPCS providers, including Securus.[6]

3. In the *2024 IPCS Order*, the Commission also ended IPCS providers' long-standing practice of paying site commission to carceral facilities, the costs of which were passed through to consumers via higher IPCS rates.[7] The *Order* strengthened the Commission's requirements for access to IPCS by incarcerated people with disabilities; adopted stronger consumer protection rules, including permanent rules addressing providers' treatment of unused funds in inactive IPCS accounts; and permitted providers, for the first time, to offer optional alternate pricing plans, subject to conditions to protect and benefit IPCS consumers.[8] Although many of the new requirements are effective 60 days after publication in the Federal Register, the Commission established staggered compliance deadlines for the new rate caps and the elimination of site commissions.[9]

4. On September 26, 2024, Securus filed a petition requesting that the Commission stay the effectiveness of the *2024 IPCS Order* pending judicial review. Securus contends that it is likely to prevail on the merits, alleging that the Commission committed errors in its statutory interpretations and ratemaking resulting in rate caps that fail to comply with the Martha Wright-Reed Act's dual requirements that the Commission's compensation plan ensure both that all IPCS providers are fairly compensated and that all rates and charges are just and reasonable, and because the Commission set a compliance timeline that is impossible for IPCS providers to meet.[10] Securus also claims that allowing the *2024 IPCS Order* to "go[] into effect as planned" will subject Securus to irreparable harm in lost revenue and compliance costs and that the balance of harms to other interested parties and the public interest support a stay.[11]

III. DISCUSSION

5. To qualify for the extraordinary remedy of a stay, a petitioner must show that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would

[4] *See, e.g.*, *2024 IPCS Order* at 60, para. 119.

[5] *See, e.g.*, *id.* at 65-66, para. 127 (discussing the adoption of rate caps derived from industry average costs); *id*. at 89-90, paras. 159-60 (discussing the used and useful framework and the zone of reasonableness approach).

[6] See *id.* at 102-04, paras. 184-85.

[7] *See, e.g.*, *id.* at 132, para. 245 (prohibiting IPCS providers from paying site commissions of any kind and preempting all state and local laws and regulations requiring or allowing IPCS providers to pay site commissions associated with IPCS).

[8] *See, e.g.*, *id.* at 229-49, 253-61, 261-91, paras. 427-471 (discussing alternate pricing plans), 482-98 (amending the Commission's rules to improve communications for incarcerated people with disabilities), 499-556 (discussing reforms to the Commission's consumer protection rules).

[9] *Id.* at 304-08, paras. 587-94. The Commission also issued the *2024 IPCS Reconsideration Order*, which resolved various petitions seeking reconsideration of, clarification of, or waivers from prior Commission orders. *See 2024 IPCS Reconsideration Order* at 309-12, paras. 599-607. Additionally, the Commission issued the *2024 IPCS Notice* to obtain additional public comment on IPCS-related issues that it could not resolve on the record then before it. *See 2024 IPCS Notice* at 312-319, paras. 608-24.

[10] Securus Stay Petition at 2, 4-16.

[11] *Id.* at 2-3, 13-17.

favor grant of the stay.[12] A stay is an "'intrusion into the ordinary processes of administration and judicial review,' . . . and accordingly 'is not a matter of right, even if irreparable injury might otherwise result'" to the movant.[13] The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.[14] Securus has failed to meet that burden.[15]

A. Securus Has Not Shown It Is Likely to Prevail on the Merits

6. To show likelihood of success on the merits, a petitioner must make a "strong showing" that they are likely to succeed;[16] a "mere possibility of relief" is insufficient.[17] As the D.C. Circuit has recognized, "[w]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review."[18] Securus principally asserts that the *2024 IPCS Order* fails to ensure that all IPCS providers are fairly compensated pursuant to section 276(b)(1)(A) of the Communications Act and that the Commission erred in several respects in

[12] *See LightSquared Technical Working Group Report*, Order Denying Motion for Stay, IB Docket No. 11-109, 36 FCC Rcd 1262, 1266, para. 8 (2021) (*Ligado Stay Denial Order*) (citing *Nken v. Holder*, 556 U.S. 418, 425-26 (2009)).

[13] *Nken*, 556 U.S. at 427 (internal citations omitted).

[14] *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8 (citing *Nken*, 556 U.S. at 433-34).

[15] Securus requests that we stay the *2024 IPCS Order on Reconsideration* and the *2024 IPCS Notice*, but makes no claims regarding the former, and no attempt regarding the latter to show that the extraordinary remedy of preventing the Commission from further developing the record meets the stay criteria. The *2024 IPCS Order on Reconsideration* dismissed as moot Securus's Petition for Clarification and Petition for Waiver because the *Order* effectively provided Securus the clarification and waiver it had requested. *See 2024 IPCS Reconsideration Order* at 311-12, paras. 604-606. There is no reason to suppose Securus suffered any cognizable harm from the Commission's dismissal of its Petition for Clarification as moot. *See 2024 IPCS Reconsideration Order* at 312, para. 604. Securus requested clarification of whether, under the existing rules, "providers [could] pay additional site commissions from end user revenues," over and above the $0.02 per-minute allowance for contractually prescribed site commissions under those rules. *See id.* (quoting Securus Petition for Clarification at 3). Clarification on this point was necessary, Securus argued, because without it "some providers [could be] competitively disadvantaged in the bidding process" for new IPCS contracts. *Id.* (quoting Securus Petition for Clarification at 4). The *2024 IPCS Order* eliminates any such risk by clarifying that, once the new rules take effect, IPCS providers will no longer be able to bid for new contracts under the terms of the old rules, even though the Commission has allowed staggered periods of time to bring "contract[s] existing as of June 27, 2024," into compliance with the new rules. *2024 IPCS Order* at 305-06, para. 587. Likewise, it is unclear what harm Securus could plausibly claim from the dismissal as moot of its request for waiver of sections 64.6030 and 64.6090 of the Commission's existing rules, the first of which prescribes that IPCS providers adhere to per-minute rate caps for interstate and international calls and the second of which prohibits providers from offering flat-rate calling for such calls. *See* 47 C.F.R. §§ 64.6030, 64.6090. Securus sought a waiver of those rules so that it could offer subscription calling plans as an alternative to assessing only per-minute rates for interstate calls. *See 2024 IPCS Order* at 232, para. 430. In the *2024 IPCS Order*, the Commission expressly acknowledged the benefits of Securus's alternative pricing plans and, *id.* at 234, para. 432, and decided to permit such plans under the new rules, *see id.* at 235, para. 435; *see also id.* at 236-50, paras. 437-471. Thus, the Commission correctly recognized that Securus's waiver request was moot under the new rules. *See 2024 IPCS Reconsideration Order* at 313, para. 606. Securus's waiver request was also moot with regard to the application of the existing rules, given Securus's representation to the Commission, in March 2022, that it had suspended its alternative pricing plans in 2021, *see 2024 IPCS Order* at 232-33, para. 430 & n.1552.

[16] *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

[17] *Nken*, 556 U.S. at 434 (internal quotation marks omitted).

[18] *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

setting IPCS rate caps.[19] Securus also argues that the Commission erred in not deferring compliance with certain rules adopted in the *2024 IPCS Order*.[20]

7. *Fair Compensation for IPCS Providers*. As the Commission concluded in the *2024 IPCS Order*, the IPCS compensation plan the Commission adopted is fully consistent with the requirement that "all payphone service providers are fairly compensated" as required by section 276(b)(1)(A).[21] Securus, however, asserts it is not.[22] Securus argues that "Congress's use of 'all'— rather than qualifying or limiting the class of providers that the Commission must ensure are fairly compensated—makes clear that the Commission's compensation plan must assure that *every* IPCS provider is made whole."[23] Securus previously raised this argument in the rulemaking and the *2024 IPCS Order* squarely addressed it.[24] As the Commission explained, the statutory mandate of fair compensation "need not be evaluated on a provider-by-provider basis."[25] The Martha Wright-Reed Act is clear that the Commission may use "industry-wide average costs" in setting just and reasonable rates under section 276(b)(1)(A).[26] Indeed, this language was added to the text of the Martha Wright-Reed Act in response to *GTL v. FCC*, where the court found that Commission's use of "industry-wide averages in setting the rate caps" in the *2015 ICS Order* was incompatible with section 276 as then written.[27] Thus, Congress envisioned just and reasonable rate regulations being set on an industry-wide, rather than provider-by-provider, basis. Consistent with that harmonized understanding of the statutory mandates, the Commission concluded that "a provider will be fairly compensated if the rates and fees it is permitted to charge will afford it an opportunity to recover industry-average costs associated with prudent investments used and useful in providing IPCS and associated ancillary services at the facilities the provider serves."[28]

8. Considering the statutory framework as a whole, along with the record before it, the Commission concluded in the *2024 IPCS Order* that rate caps "based on costs evaluated on an aggregated basis generally will satisfy the requirement that all payphone service providers be fairly compensated."[29] And "[a]cross the industry, the[] rate caps will allow providers to generate sufficient revenue from the audio and video communications they provide (1) to recover the actual, direct costs of each communication, and (2) to make a reasonable contribution to their indirect costs related to IPCS."[30] The Commission sensibly "decline[d] to set rate caps that ensure cost recovery for providers with unusually

[19] Securus Stay Petition at 4-11.

[20] *Id.* at 11-13.

[21] *See, e.g.*, *2024 IPCS Order* at 122, para. 219 (finding that "a provider will be fairly compensated if it is afforded an opportunity to recover the industry average of [the prudently incurred investments and expenses that are used and useful in the provision of IPCS] on a company-wide basis"); 47 U.S.C. § 276(b)(1)(A).

[22] Securus Stay Petition at 4.

[23] *Id.* at 5 (emphasis in original).

[24] *2024 IPCS Order* at 122, para. 219 n.777 (noting that "Securus argues that the Martha Wright-Reed Act requires that *each provider* be able to recover its average costs") (emphasis in original); Public Interest Parties Opposition at 3 (noting that "Securus spends much of its discussion of its likelihood of success on the merits simply rehashing an argument that the Commission has already rejected: that Section 276(b)(1)(A) . . . requires that the new rate caps account for costs on a provider-by-provider basis, rather than using an industry average").

[25] *2024 IPCS Order* at 37, para. 69; Public Interest Parties Opposition at 3.

[26] *2024 IPCS Order* at 65-66, para. 127 (citing, among other things, Martha Wright-Reed Act § 3(b)(1)).

[27] *Global Tel* Link v. FCC*, 866 F.3d 397, 414 (D.C. Cir. 2017) (*GTL* or *GTL v. FCC*); *see 2024 IPCS Order* at 37, para 69.

[28] *2024 IPCS Order* at 38, para. 71.

[29] *Id.* at 122, para. 219 n.777.

[30] *Id.* at 122, para. 220.

high costs because to let unusual cases determine rates generally would result in unjust and unreasonable rates," contrary to the independent mandate of section 276(b)(1)(A).[31] Instead the Commission made clear that "if such providers exist, they can seek a waiver."[32]

9. Securus also asserts that the Commission's rate caps are "below cost for one-third of IPCS providers" and that when costs are "appropriately accounted for—including necessary safety costs the Commission excludes from its lower bound and the massive compliance costs that the Commission ignores—*more than half* of all industry providers will be unable to recover costs for audio services they provide under the new rate caps."[33] Securus's argument is premised in part on the notion that the Commission has not "appropriately accounted" for provider costs because it has excluded certain costs. But excluding certain costs is precisely the task that Congress required the Commission to perform to ensure, consistent with the Martha Wright-Reed Act, that all "payphone service providers are fairly compensated, and all rates and charges are just and reasonable, for completed intrastate and interstate communications."[34] As explained in the *2024 IPCS Order*, the Commission relied on the used and useful framework and its associated prudent expenditure standard "to assess the costs that should either be included or excluded from [the Commission's] rate cap calculations to ensure just and reasonable rates and charges for IPCS."[35] This is "a familiar task of the sort the Commission has long undertaken when seeking to ensure just and reasonable rates and charges, where it has evaluated costs and expenses of various kinds of which providers sought recovery through regulated rates."[36] In deriving its rate caps in this way, the Commission afforded "providers an opportunity to recover the used and useful costs incurred to provide IPCS" and also ensured that IPCS rates are "affordable for incarcerated people and their loved ones."[37] The extent to which certain costs and expenses were not included in the Commission's rate cap calculations is the result of the Commission's application of the longstanding used and useful framework to determine whether such costs and expenses are not used and useful in the provision of IPCS and therefore not recoverable through IPCS rates.

10. We also reject Securus's argument about inadequate cost recovery insofar as it selectively relies on certain statements in the *2024 IPCS Order*.[38] Securus claims that the Commission acknowledged that costs incurred by four of the IPCS providers exceed revenues when the Commission revealed that "[p]otential revenues for eight out of 12 IPCS providers exceed their total reported costs when excluding site commissions and safety and security categories that generally are not used and useful in the provision of IPCS."[39] But Securus neglects the fact that those eight firms who will have adequate cost recovery under the Commission's Martha Wright-Reed Act paradigm "represent over 90 percent of revenue, 96 percent of [average daily population], and 96 percent of billed and unbilled minutes in the dataset."[40] Securus also fails to account for the Commission's conclusion that its estimates of providers'

[31] *2024 IPCS Order* at 38, para. 71 n.234; *see also* Public Interest Parties Opposition at 3.

[32] *Id.* at 38, para. 71 n.234.

[33] Securus Stay Petition at 6 (emphasis in original).

[34] 47 U.S.C. § 276(b)(1)(A).

[35] *2024 IPCS Order* at 25, para. 42.

[36] *Id.* at 186, para. 355.

[37] *Id.* at 60, para. 119.

[38] Securus Stay Petition at 6.

[39] *2024 IPCS Order* at 120, para. 216.

[40] *Id.*

average costs were "likely overstated," which made it "unlikely that any provider w[ould] be unable to recover its individual average costs of providing audio and video IPCS."[41]

11. *Treatment of Safety and Security Costs*. Securus argues that the Commission erred in its evaluation and treatment of safety and security costs in several respects. First, Securus asserts that the "Commission violated the 'fairly compensated' requirement by adopting a 'used and useful' approach that led it to ignore prerequisite safety and security costs."[42] Securus argues that "[m]easures that 'are required by state correctional institutions as a condition of doing business' are 'condition[s] precedent' to IPCS providers' services, and thus must be part of the calculus in determining 'fair compensation.'"[43] We disagree.

12. In the *2024 IPCS Order*, the Commission observed that IPCS providers may be required to make site commission payments to correctional institutions that fund various safety and security measures.[44] To the extent that IPCS providers were required to pay site commissions, "the D.C. Circuit's decision in *GTL v. FCC* suggests that the fair compensation requirement in section 276(b)(1)(A) requires that IPCS providers be able to recover those payments through IPCS rates and charges."[45] The Commission in the *2024 IPCS Order* recognized that site commissions interfere with its ability to implement the dual statutory requirements of determining just and reasonable rates and charges and fair compensation for IPCS providers.[46] To remedy this problem, the Commission precluded providers from paying site commissions altogether, thereby eliminating "the factual predicate—the payment of site commissions as a condition precedent to providing IPCS—which led the court in *GTL* to hold that site commissions could not be wholly excluded from the Commission's ratemaking calculus."[47] The Commission also prohibited IPCS providers from "enter[ing] into a contract with a correctional facility for the provision of IPCS where, as a condition precedent to providing IPCS, the provider must agree to pay a site commission of any kind."[48] In eliminating site commission payments, including those that may fund various safety and security measures, the Commission "best ensure[d] fair compensation and just and reasonable rates and charges for IPCS."[49]

13. Second, Securus argues that the Commission "misapplies" the used and useful standard, which Securus argues "was created for rate-of-return regulation for services sold to end-user customers and cannot be applied to IPCS."[50] Securus also asserts that the Commission's application of the used and useful framework "ignores Congress's requirement that the Commission consider necessary safety and

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[41] *Id.* at 120, para. 216 n.765; *see also 2024 IPCS Order* at 111, para. 199 ("Most critically, providers' total reported costs across the industry for 2022 exceed their total reported revenues by approximately $219 million. The existence of such a disparity, let alone its magnitude, strongly suggests that reported costs are inflated, given that rational firms are profit seeking."). And in the event providers are unable to recover their used and useful IPCS costs, the Commission reminded providers that they would be free to seek a waiver of the Commission's rules. *See, e.g.*, *2024 IPCS Order* at 120 n.765; *see also 2024 IPCS Order* at 250-53, paras. 475-81 (describing the waiver process).

[42] Securus Stay Petition at 7.

[43] *Id.* (quoting *GTL v. FCC*, 866 F.3d at 413).

[44] *2024 IPCS Order* at 137, para. 251 & n.873; *id.* at 204, para. 382.

[45] *Id.* at 158, para. 296.

[46] *Id.*

[47] *Id.* at 165, para. 307.

[48] *Id.* at 175, para. 331.

[49] *2024 IPCS Order* at 175, para. 332.

[50] Securus Stay Petition at 8.

security costs *on top of* the Commission's pre-existing obligation to ensure just and reasonable rates."[51] The Commission considered and rejected these same arguments in the *2024 IPCS Order*. Addressing such assertions in the *2024 IPCS Order*, the Commission observed that the used and useful framework "remains the most practical and effective method for determining the costs providers and facilities reasonably incur in providing IPCS."[52]

14. We also disagree with Securus that the Commission ignored the Martha Wright-Reed Act's directive to consider necessary safety and security measures in determining just and reasonable rates and charges for IPCS.[53] As the Commission explained, "[w]hile section 3(b)(2) of the Martha Wright-Reed Act requires [the Commission] to 'consider' certain safety and security costs when determining just and reasonable rates . . . [the Commission] employ[s] the 'used and useful' framework to determine what costs and expenses can be recovered through just and reasonable IPCS rates."[54] Thus, the Commission's "consideration of safety and security costs as required by section 3(b)(2)—and with respect to other safety and security costs raised in the record—occurs within the context of that 'used and useful' analysis."[55] And that is precisely what the Commission did in the *2024 IPCS Order* in considering and evaluating "all of the arguably recoverable costs in the record, including costs associated with safety and security measures, to distinguish those costs that should be included in [the Commission's] ratemaking calculus from those that should not."[56] In doing so, the Commission arrived at a "middle ground that properly balances 'the equitable principle that public utilities must be compensated for the use of their property in providing service to the public' with the '[e]qually central . . . equitable principle that ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.'"[57]

15. Third, Securus contends that "the Commission applied the used and useful standard arbitrarily and capriciously" by, for example, excluding recovery for safety and security measures that benefit consumers and allowing recovery for measures that do not benefit consumers.[58] This argument ignores the context in which the Commission's evaluation of safety and security measures took place. The Commission acknowledged that the categories of safety and security costs reported in the 2023 Mandatory Data Collection were "imprecise."[59] It also acknowledged that "providers' allocations of their safety and security costs are at times inexact among these categories."[60] To account for the imperfect nature of the data, the Commission evaluated the categories of safety and security measures "based on the nature of the preponderance of tasks or functions within each category. If the predominant use of tasks and functions within a category [were] not used and useful, the entire category [was] treated as not used and useful."[61] The Commission also adjusted its rate setting within the zones of reasonableness "to

[51] *Id.* (emphasis in original).

[52] *2024 IPCS Order* at 27, para. 44; Public Interest Parties Opposition at 4; *see also, e.g.*, *2024 IPCS Order* at 186-204, paras. 355-82 (discussing the relevant statutory considerations in the specific context of reported safety and security costs).

[53] Martha Wright-Reed Act § 3(b)(2).

[54] *2024 IPCS Order* at 195, para. 370.

[55] *Id.*

[56] *Id.* at 208, para. 389.

[57] *Id.* at 208, para. 389 (quoting *American Telephone and Telegraph Company The Associated Bell System Companies*, Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 38, para. 111 (1977).

[58] Securus Stay Petition at 8.

[59] *2024 IPCS Order* at 205-06, para. 385.

[60] *Id.*

[61] *Id.*

develop overall rate caps that recognize the imprecision of both the seven defined safety and security categories in the 2023 Mandatory Data Collection, and the inconsistencies in the narrative descriptions and varied allocations made in provider responses."[62] These adjustments provided the Commission with a workable methodology to conduct a thorough and orderly review of the safety and security cost data in the record under the used and useful standard.

16. Because the Commission evaluated the safety and security cost data based on the preponderance of tasks within each category, it is not surprising that, in some cases, such as for law enforcement support services, some functions within a given category might benefit consumers.[63] But that does not mean they are necessarily recoverable under the used and useful standard when evaluated as a whole. Indeed, in the case of law enforcement support services, the Commission noted that certain tasks, while potentially beneficial, "do not facilitate the provision of IPCS and are therefore not used and useful in the provision of IPCS."[64] Conversely, in other circumstances there may be categories that have no direct benefit to the consumer but that the Commission concluded were used and useful and therefore recoverable.[65] Should a given provider be able to demonstrate in a given instance that a particular safety and security cost not generally included in the rate caps is, in fact, used and useful, it is free to seek a waiver dealing with its special circumstances.[66]

17. Finally, Securus argues that "the Order's finding that IPCS providers must comply with CALEA and its determination of which safety and security measures are necessary reversed decades of contrary practice with no reasoned explanation."[67] Securus is mistaken. Regarding CALEA, the Commission concluded in the *2024 IPCS Order* that "[c]ontrary to Securus's claim that [the Commission has] departed from Commission precedent without proper notice, [the Commission is] not modifying such precedent."[68] IPCS providers that offer both payphone services and audio communications services, including telecommunications services and VoIP, have been and will remain subject to CALEA requirements.[69]

18. The Commission also has not reversed practice or precedent without explanation in connection with its determination of which safety and security measures are necessary for IPCS. In the *2024 IPCS Order*, the Commission determined that while it has "historically recognized that safety and security measures were, at least in some sense, inherent in providing communications services for incarcerated people, it has been clear from the outset that only certain safety and security costs should be recovered through regulated rates."[70] Until the *2024 IPCS Order*, however, the Commission had not

[62] *Id.* at 206, para. 387.

[63] *See id.* at 212, para. 394 (recognizing that "some functions in this category may provide a benefit to incarcerated people").

[64] *Id.* at 213, para. 394.

[65] In the case of CALEA compliance measures, the Commission was "not persuaded that the functionalities associated with CALEA compliance generally would directly benefit IPCS users" but concluded that they are used and useful in the provision of IPCS primarily because "without CALEA compliance, IPCS providers could not offer their audio and certain advanced communications services." *Id.* at 209, para. 391.

[66] *Id.* at 205-06, para. 385 n.1384; *see also id*. at 124, para. 222 n.787 (explaining how the Commission has relied on similar approaches to identifying recoverable costs in other contexts in the past).

[67] Securus Stay Petition at 9.

[68] *2024 IPCS Order* at 210, para. 391 n.1402.

[69] *See id.*

[70] *Id.* at 198, para. 375.

decided which safety and security measure costs should be recoverable in IPCS rates.[71] The Commission therefore rejected Securus's "suggestion that 'Commission precedent is crystal clear that the costs of safety and security measures such as recording, monitoring, biometrics, and related services are inherent in the provision of communications services to the incarcerated.'"[72] And, as the Commission noted, "[t]he mandate in section 276(b)(1)(A) that [the Commission] ensure just and reasonable rates for consumers, in conjunction with the Martha Wright-Reed Act's requirements that [the Commission] consider safety and security costs 'necessary' to the provision of IPCS, requires that [the Commission] reevaluate this precedent at any rate."[73]

19. *Reliance on Total Costs.* In determining the upper and lower bounds of its zones of reasonableness, the Commission calculated industry average costs per minute by dividing total costs (the sum of the costs of both billed and unbilled minutes) by total minutes, based on its finding that this approach more accurately reflected providers' average costs per minute than an approach that used billed minutes as the denominator.[74] Securus maintains that in so doing, the Commission departed from its prior practice without sufficient explanation.[75] Securus argues that the Commission's reliance on total minutes "violates the fairly compensated requirement," and guaranteed that IPCS providers would be unable to fully recover their costs of providing IPCS.[76]

20. The Commission explained in the *2024 IPCS Order* that "[t]he use of both billed and unbilled minutes is an improvement from the *2021 ICS Order*, which divided expenses by paid minutes, and better reflects the cost of actual minutes."[77] Securus's arguments ignore the adverse effects rate caps based on only billed minutes would have on IPCS consumers, as well as the variability of unbilled minutes practices now and in the future.[78] As an initial matter, the industry-wide average cost per minute of providing IPCS equals total costs divided by total minutes, a mathematical fact that Securus does not appear to dispute. Instead, Securus contends, in effect, that the Commission should have inflated that average in recognition of the possibility that, once the rate caps are implemented, IPCS providers may continue to provide incarcerated people with "free" minutes, either in response to correctional institution requirements or at their volition. But, as the Commission explained, "the ratio of billed minutes to unbilled minutes varies across facilities, and rate caps based on the average cost of a billed minute would allow over recovery of costs, and therefore unreasonably high rates, in facilities" with relatively high ratios, "while allowing under-recovery in other facilities."[79] Given this, the Commission correctly concluded that Securus's approach would result in the Commission "effectively requiring incarcerated people who receive relatively few free minutes to subsidize other users."[80] Further, as the Commission recognized, "the relative proportions of billed to unbilled minutes [might] shift" once the rate caps are

[71] *Id.* Additionally, the "relevant statutory language did not dictate the inclusion of any particular safety and security costs." Stephen Raher Opposition at 3.

[72] *2024 IPCS Order* at 198-99, para. 375 (quoting Securus Technologies, LLC Comments, WC Docket Nos. 23-62 and 12-375, at iii (filed May 8, 2023)).

[73] *2024 IPCS Order* at 199, para. 375.

[74] *Id.* at 107, para. 190.

[75] Securus Stay Petition at 10.

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

[77] *2024 IPCS Order* Appx. E at 378, para. 4.

[78] *2024 IPCS Order* Appx. E at 378, para. 4 n.8.

[79] *Id.*

[80] *Id.*

implemented.[81] If that were to happen, rate caps calculated by dividing total costs by billed minutes "would become outdated."[82]

21. Correctional institutions currently require many IPCS providers to provide certain types of communications (e.g., calls to public defenders) that, from the incarcerated person's perspective, are "free."[83] Securus argues that the Commission's failure to set rate caps at levels that provide for the recovery of the costs of these communications violates the fairly compensated requirement.[84] But under the rules adopted in the *2024 IPCS Order*, nothing requires IPCS providers to bear the costs of such calls themselves at the behest of correctional institutions.[85] Indeed, providers may enter into contractual arrangements under which a correctional authority pays a provider for such calls.[86] And, if providers choose to allow incarcerated people to make additional communications without charging them or those they communicate with, that approach is fully consistent with the Commission's compensation plan for IPCS, which sets rate caps rather than prescribing rates that providers must charge and thus allows providers to charge rates at or below the caps.[87] Rate caps set in anticipation of such voluntary action by providers would be unreasonably high.

22. *Other Methodology Issues*. Securus claims "the Commission made several additional methodological errors in setting its zone of reasonableness."[88] It concludes that "[e]ach of these errors (and others) further drove down the boundaries of the zone of reasonableness caps to confiscatory levels and further demonstrates that the Commission's Order is both arbitrary and capricious and contrary to law."[89] As an initial matter, setting the upper and lower bounds of the zones of reasonableness for IPCS rate caps, while part of the rate setting process, does not set rates and therefore cannot be considered, by itself, to be confiscatory. These bounds and the zones they prescribe are intermediary steps in the rate cap setting process and function as only several of the many parameters the Commission used to make its final determinations of IPCS rate caps.

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[81] *Id.*

[82] *Id.*; Public Interest Parties Opposition at 5. Given these considerations, the Commission correctly departed from the approach it have followed in the *2021 ICS Order*. Additionally, as the Public Interest Parties argue, "the number of unbilled minutes is {[ ]}, and would have at most only *de minimis* impact on Securus and other providers." *Id.* For example, based on the Brattle Group's analysis, the total reported unbilled audio minutes as a percentage of total audio minutes is approximately {[ ]} for Securus and approximately {[ ]} for all providers. *Id.* Thus, "excluding unbilled minutes in the calculation of the rates is unlikely to materially impact the actual rate caps." *Id.* Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[83] *2024 IPCS Order* Appx. E at 378-79, para. 4 nn.8-9.

[84] Securus Stay Petition at 10.

[85] *See* 47 CFR § 64.6015 (prohibiting site commissions); *id*. § 64.6000 (site commission "means any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Incarcerated People's Communications Services or affiliate of a Provider of Incarcerated People's Communications Services may pay, give, donate, or otherwise provide to an entity that operates a Correctional Institution, an entity with which the Provider of Incarcerated People's Communications Services enter into an agreement to provide Incarcerated People's Communications Services, a governmental agency that oversees a Correctional Facility, the city, county, or state where a Facility is located, or an agent of any such Facility").

[86] *2024 IPCS Order* Appx. E at 379, para. 4 n.9.

[87] *Id.* at 130, para. 237 (declining to preempt state or local laws and regulations requiring rates lower than the caps the Commission adopted in the *2024 IPCS Order*).

[88] Securus Stay Petition at 10.

[89] *Id.* at 11.

23. *Inflation*. Securus mistakenly claims that the Commission "refused to account for the impact of inflation when setting its rate caps."[90] The Commission expressly acknowledged accounting for inflation as one of a number of factors used in setting its rate caps. It stated that "[s]etting rate caps above the lower bounds will help to account for . . . any inflation not offset by productivity growth."[91] In addition, the Commission acknowledged advocacy in the record in favor of incorporating an inflation factor in its rate caps but found that an inflation factor was not appropriate.[92] It noted that commenters favoring the use of an inflation factor "generally fail to acknowledge the role that productivity increases play in offsetting inflation."[93] As a point of comparison, the Commission acknowledged its findings in a separate proceeding for price cap carriers that inflation and productivity gains generally tended to offset each other.[94] Finally, the Commission noted that inflation in the telecommunications industry was generally lower than in the economy as a whole.[95]

24. *Compliance Costs*. Securus asserts that the Commission "excluded the costs of complying with its new rules from its rate cap calculations."[96] While the Commission stated that it generally excluded one-time implementation costs as being inappropriate for inclusion in permanent rate caps,[97] it nonetheless included compliance costs as a factor in its rate setting, contrary to Securus' argument. Specifically, in deciding to set rate caps above the lower bounds of the zones of reasonableness, it factored into its calculations the possibility that providers' costs of implementing the Commission's actions "may, on balance, exceed their ongoing savings from" implementing Commission rules that lower their costs.[98] The Commission took "the conservative approach of setting [its] rates somewhat above the lower bounds to account for" these and other costs providers may incur.[99]

25. *Omitting Facility Costs From Lower Bounds*. Securus claims that the Commission erred in "omitt[ing] all facility costs from the lower bound," which it claims contributed to driving down the

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[90] *Id.*

[91] *2024 IPCS Order* at 118-19, para. 213 ("Setting rate caps above the lower bounds will help to account for the possibility that the adjustments we applied to providers' reported costs to obtain the lower bound estimates were too aggressive, to account for the possibility that aspects of our evaluation of used and useful costs to provide IPCS may be inaccurate to some degree, to account for any inflation not offset by productivity growth, and to ensure that providers will be better able to recover their costs of providing TRS.").

[92] *Id.* at 67-68, para. 129.

[93] *Id.* at 68, para. 129.

[94] *Id.* at 68, para. 129 n.433. *See Business Data Services in an Internet Protocol Environment, et al*., WC Docket No. 16-143 et al., Report and Order, 32 FCC Rcd 3459, 3559, para. 244 (2017), remanded in part sub nom., *Citizens Telecomms. Co. of Minn, LLC v. FCC*, 901 F.3d 991 (2018) (finding, in a price cap setting, that productivity gains over a period of 12 years "were almost exactly offset by inflation").

[95] *See 2024 IPCS Order* at 68, para. 129 n.431 ("Over the last decade, the average annual change of the Telecommunications PPI was 0.7%, as compared to the average annual change of the broader GDP Deflator over the same time period of 2.6%."); *see also* Letter from Chérie R. Kiser, Cahill Gordon & Reindel LLP, Counsel to Global Tel*Link Corporation d/b/a ViaPath Technologies, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-61 and 12-375, Attach., Report in Support of *Ex Parte* Presentation of Global Tel*Link Corp., at 26-28 (filed June 13, 2024) (showing that, historically, growth in the Telecommunications PPI has been lower, on average, than general measures of inflation); Public Interest Parties Opposition at 6 (noting that "[p]ermitted costs in the telecommunications industry have either declined or been stable for a significant period, suggesting it is not clear whether an adjustment for inflation would increase or decrease rates").

[96] Securus Stay Petition at 11.

[97] *2024 IPCS Order* at 119, para. 214.

[98] *Id.*

[99] *Id.*

zones of reasonableness "to confiscatory levels."[100] Here again, Securus focuses only on an intermediary step in the Commission's rate setting process—the lower bounds. While the Commission appropriately excluded any estimate of facility costs from the lower bound of the zone of reasonableness given the absence of reliable facility cost data,[101] Securus fails to acknowledge that the Commission included a generous estimate of facility costs in the upper bound.[102] The Commission observed that "[t]his balancing reflects our recognition, on the one hand, that correctional facilities may well incur used and useful costs in allowing access to IPCS, with the absence of any basis in the record that would enable us to estimate those costs with any degree of precision."[103] The Commission concluded that "[g]iven the likelihood that the estimate we accepted for the upper bounds is overstated, we find that using a lower estimate of these costs at the lower bounds minimizes reliance on flawed data while we still provide for the opportunity to recover costs for providing IPCS through our process for determining rate caps."[104] Ultimately, contrary to Securus's assertions, the Commission incorporated facility costs into its final rate caps by utilizing facility costs as one of several factors in driving its final rate caps above the lower bounds.[105]

26. *Cost of Capital*. Securus contends that the Commission "adopted too low a cost of capital for its lower bound that ignored record evidence of the actual costs of capital," which it claims contributed to driving down the lower bounds of the zones of reasonableness to "confiscatory levels."[106] Securus was one of two IPCS providers that sought to demonstrate a higher cost of capital than the default cost of capital most IPCS providers used in their data submissions.[107] The Commission conducted a detailed analysis of Securus's claims for its cost of capital and found that certain aspects of its cost of capital analysis were flawed.[108] It found that "Securus relies on a number of aggressive and insufficiently justified assumptions to develop its [cost of capital] estimate."[109] The Commission concluded that Securus "failed to meet [its] burden of justifying the alternative [cost of capital]" it proposed and therefore determined that "the most reasonable approach for factoring the [cost of capital] into our lower bounds is to apply the default [cost of capital] figure."[110] While Securus claims that the cost of capital

[100] Securus Stay Petition at 11.

[101] *2024 IPCS Order* at 92, para. 166 ("Despite these numerous and repeated public attempts to obtain relevant data, commenters have neither provided updated facility cost data nor proposed a methodology that would allow the Commission to accurately estimate used and useful correctional facility costs.").

[102] *Id.* at 93, para. 168 (conceding that "even the 2021 data analysis suggested that the $0.02 per minute interim allowance might have been too high"). *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9579-80, 9755-56, paras. 135-36 & Appx. H (2021) (*2021 ICS Order*).

[103] *2024 IPCS Order* at 93, para. 168.

[104] *Id.* at 111, para. 201; *see also, e.g.*, *id.* at 121, para. 218 (discussing the Commission's conclusion "that our rate caps do not threaten providers' financial integrity such that they could be considered confiscatory").

[105] *Id.* at 118-19, para. 214 (recognizing "several specific factors that guide us to select rate caps above our lower bounds" including that "facilities may incur certain costs that are used and useful in the provision of IPCS"). And in the unlikely event that a given provider can demonstrate that the adopted rate caps would result in confiscatory rates under its specific circumstance, it can seek a waiver.

[106] Securus Stay Petition at 11.

[107] *See, e.g.*, *2024 IPCS Order* Appx. I at 410-14, paras. 3-37.

[108] *Id.*

[109] *Id.* at 426, para. 37.

[110] *2024 IPCS Order* at 112-13, para. 203; Public Interest Parties Opposition at 6 (arguing that "Securus has not provided any evidence that the riskiness of IPCS is greater than that of the telecommunications sector in general to justify using a cost of capital value that is higher than the standard" cost of capital).

adopted by the Commission was too low, it fails to explain why the Commission's decision was not reasonable or provide any additional information or analysis that would rebut the Commission's findings.

27. *Use of Brattle Group Model as a Validator*. Securus also claims that the Commission's limited use of the results of the Brattle Group Model represented a methodological error in setting its IPCS rate caps.[111] The Brattle Group developed and introduced in the record a model estimating the costs of providing IPCS.[112] The "model carrier approach . . . set rates by reference to general telecommunications industry-average costs for non-IPCS calls" and "adjust[ed] for costs that may be particular to the provision of service in incarceration facilities."[113] The Commission considered the model but "decline[d] to adopt a model carrier approach to establish the rates for either audio or video IPCS."[114] Instead, the Commission analyzed the model as one of three different sources to validate its lower bounds.[115] The limited reliance the Commission placed on the model as one of several sources to validate its lower bounds does not rise to the level of a methodological flaw that would justify a stay.[116] This is particularly true given the Commission's assessment that the validation provided by the Brattle Group model was treated as merely supportive—rather than dispositive—to the Commission's lower bound determination, which was itself a step removed from the actual establishment of rate caps above that lower bound.

28. *Compliance Date for Ancillary Service Charges*. Securus argues that the *2024 IPCS Order* "is ambiguous about when its prohibition of separate fees for ancillary services takes effect."[117] It asks "the Commission [to] clarify . . . the compliance deadline for the elimination of ancillary service charges.[118] On the contrary, the Commission in the *2024 IPCS Order* makes clear that the prohibition on separate fees for ancillary services takes effect 60 days after notice in the Federal Register. Securus even appears to concede this lack of ambiguity when it correctly resolves its own uncertainty, stating elsewhere in its Petition that "the Order unambiguously provides an extended compliance date only for its new rate caps and its elimination of site commissions" and further states that "the Order is clear that other changes – except those subject to OMB review under the Paperwork Reduction Act – go into effect on

[111] Securus Stay Petition at 11.

[112] The initial model was filed on July 12, 2023 and a revised model was filed on February 11, 2024. *See* Wright Petitioners et al. Reply, WC Docket Nos. 23-62 and 12-375, Appx. A, Brattle Report (filed July 12, 2023); Letter from Gregory R. Capobianco, Jenner & Block, LLP, Counsel to Wright Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, Appx. A, Brattle Report (filed Feb. 11, 2024).

[113] *2024 IPCS Order* at 65, para. 126. Securus also claims that the "Brattle Group Model [] purported to derive an 'industry' model relying heavily on retail rates of resellers of *a single European company*." Securus Stay Petition at 11 (emphasis in original). Securus, however, does not claim that the wide range of rates the Brattle Group used to estimate VoIP costs are not representative of per minute costs generally in the VoIP industry. *See* Letter from Gregory R. Capobianco, Jenner & Block, LLP, Counsel to the Wright Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, Appx. A, Brattle Group, Response to the FCC's Implementation of the Martha Wright-Reed Act, at III-7, fig. 1 (filed July 12, 2024) (Brattle July 12, 2024 Report) (showing a range of cost per minute of 64 VoIP providers between $0.000 and $0.024). Even at the high end of that range, the Brattle Group Model would generate cost estimates that would validate the Commission's audio IPCS rate caps.

[114] *2024 IPCS Order* at 65, para. 126.

[115] *Id.* Appx. I at 425-28, paras. 69-79.

[116] *Id.* at 428, para. 79 ("Staff acknowledge that the model carrier is not a substitute for a fully distributed cost analysis of provider investments and expenses." . . . However, staff are encouraged that the benchmark audio IPCS rates estimated by the revised model align closely with the lower bounds we have established, which helps to validate both our lower bound estimates and the rate caps that we ultimately adopt.").

[117] Securus Stay Petition at 11.

[118] *Id.* at 12.

November 19, 2024."[119] The *2024 IPCS Order* is clear: the "reforms eliminating site commission and [the] new permanent audio and interim video rate caps will take effect 60 days after notice of them is published in the Federal Register, but compliance with those reforms will be required on a staggered basis."[120] It further provides that "all other rules and requirements adopted in this Order also will take effect 60 days after notice is published in the Federal Register."[121] The rules adopted by the Commission in the Order are equally clear regarding the applicability of compliance deadlines. The rules addressing rate caps and site commissions include provisions imposing different compliance deadlines depending on the status of the contract, the size of facility, and whether site commissions are legally mandated[122] The rule prohibiting ancillary service charges does not.[123]

29. Securus asserts that "the Order fails to explain why this one aspect of its rate structure reform should take effect earlier than the rest of it."[124] Securus is incorrect. As the Commission explained in the *2024 IPCS Order*, the compliance dates for the rate caps and the site commission prohibition as opposed to other reforms were deferred because "[t]hese timeframes recognize that, as a general matter, IPCS providers, governmental officials, and correctional officials may need additional time . . . to renegotiate contracts" and, in the case of legally mandated site commissions, "more time may be needed to accommodate the legislative process to amend state or local laws and regulations that currently require site commission payments."[125] Securus claims that it "detailed the difficulties in complying with the many operational changes that the Order imposes on IPCS" but fails to cite any source detailing its alleged challenges in implementing the changes to the ancillary service rules.[126] Apart from citing revenues it will forego, Securus makes no claim that it would experience any specific operational difficulties eliminating ancillary service charges. It also does not claim that any State or local law mandates ancillary service charges. In short, the rationales for extending the compliance dates for rate caps and the site commission prohibition generally do not apply to eliminating ancillary service charges.[127] Securus provides no rational basis to upend the Commission's previous conclusion that it does "not view these other reforms as involving similar complexities such that a longer effective date period is necessary."[128]

30. Securus thus has failed to establish that its challenges to the Commission's actions are likely to succeed on the merits.

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[119] *Id.* at 11; *see also* Stephen Raher Opposition at 3 (noting that the effective date of the Commission's prohibition of separate ancillary service charges is "not ambiguous").

[120] *2024 IPCS Order* at 304, para. 587.

[121] *Id.* at 308, para. 595.

[122] 47 CFR §§ 64.6010(d), 6015(a)(2), (3).

[123] 47 CFR § 64.6020.

[124] Securus Stay Petition at 12.

[125] *2024 IPCS Order* at 305, para. 588.

[126] Securus Stay Petition at 12.

[127] Securus claims that it {["
."]} *Id.* at 14. The Commission determined that "the compliance dates we adopt for our new audio and video rate caps and site commission reforms "'strike[] a reasonable balance between []' . . . the need for expedited reform contemplated by the Martha Wright-Reed Act with the need to allow IPCS providers and correctional facilities sufficient time to adapt to our rules." *2024 IPCS Order* at 305, para. 589. Extending compliance dates for implementing the Commission's ancillary service charge reforms did not represent the same balance of interests. The Commission did not consider ceasing to assess ancillary service charges on consumers to fall outside of the normal scope of a change of law provision.

[128] *2024 IPCS Order* at 308, para. 595.

B. Securus Fails to Show It Will Suffer Irreparable Harm

31. Securus likewise fails to demonstrate that it would suffer imminent and irreparable harm without a stay. To establish irreparable harm, a petitioner must show that it will suffer injury that is "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.'"[129] In doing so, the petitioner must present actual evidence to "substantiate [its] claim" of injury.[130] "'Bare allegations of what is likely to occur are of no value' under this factor, because we 'must decide whether the harm will *in fact* occur.'"[131] Securus has not met its burden to make and substantiate these showings.[132]

32. Securus alleges it will "suffer {[ ]}" if the *2024 IPCS Order* is not stayed, and that the prohibition on ancillary service charges will amount to a loss of "{[ ]}"[133] Securus also asserts that even if the prohibition on ancillary service charges were to take effect beginning January 2025, it would nonetheless {[ ]}[134] We find Securus has not substantiated these contentions. To the contrary, as described in the *2024 IPCS Order*, the new rate caps include recovery of all costs of providing ancillary services.[135] Claims of lost revenue are therefore misleading; in the long term, the Commission's IPCS rate caps allow providers to recover all ancillary service charge costs as part of their per-minute charges.[136] Further, to the extent that Securus will not have fully instituted the new rate caps, they will continue to charge above-cost rates in the interim.[137] We therefore find claims of such ongoing losses meritless, and find no irreparable harm stemming from Securus's purported lost revenues.

33. In addition, Securus speculates that it "{[ ]}" to account for the prohibition of ancillary service charges.[138] Again, Securus provides no support for this assertion, demonstrating neither the necessity of renegotiation nor the scope of affected contracts. As the Commission observed in the *2024 IPCS Order*, the record suggests that "providers can

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[129] *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)); *see Ligado Stay Denial Order*, 36 FCC Rcd at 1267, para. 10.

[130] *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

[131] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, CC Docket No. 96-98, 11 FCC Rcd 11754, 11757, para. 8 (1996) (quoting *Wis. Gas*, 758 F.2d at 674).

[132] We note that in alleging irreparable harm, Securus does not claim harm specifically resulting from the *2024 IPCS Order on Reconsideration* nor the *2024 IPCS Notice* . *See generally* Securus Stay Petition at 13-17.

[133] Securus Stay Petition at 2, 14.

[134] *See id.* at 14; *see also* Dougherty Declaration at 3, para. 10. Securus offers little to no concrete evidence to support the increasing scale of losses which it claims, and it ignores relief from the associated costs. *See* Public Interest Parties Opposition at 7 ("[E]conomic loss ordinarily 'does not, in and of itself, constitute irreparable harm.' . . . Securus has failed to provide any evidence that the various types of revenue loss it claims it would suffer could not be recovered through subsequent legal action." (quoting *In re NTE Conn., LLC*, 26 F.4th 990, 990–91 (D.C. Cir. 2022)).

[135] *See 2024 IPCS Order*, at 68-75, paras. 130-37 (describing ancillary services costs as folded into the rate cap calculation).

[136] *See 2024 IPCS Order*, at 220-29, paras. 408-26.

[137] And insofar as the prohibition on separate charges for ancillary services takes effect before the new rate caps, the new rate caps are in all cases *lower* than the existing rate caps. *See id.* at 3-4, para. 3. Thus, there likewise could be no financial harm while the existing rate caps remain in place.

[138] Securus Stay Petition at 14.

amend their contracts very quick[l]y, or even immediately, following a new statute or regulation," undercutting the purported harm.[139] Securus then stacks speculation upon speculation, asserting that its "{[ ]}" and would be provided "{[ ]}"[140] Again, nothing in the record suggests the same and we reject such assertions as speculative and conclusory.

34. Securus similarly alleges that it will "suffer additional losses when the rate caps begin to apply," up to {[ ]}. However, lower rates are inherently part of rate regulation and entirely consistent with the intent of the Martha Wright-Reed Act to make IPCS more affordable for incarcerated persons and their loved ones.[141] Furthermore, Securus fails to take into account the likelihood that demand for IPCS will increase as a result of the newly adopted rate caps and consequently reduce the average per-minute costs it observes.[142]

35. Securus also claims that it will face "sizeable compliance costs" as a consequence of the reforms adopted in the *2024 IPCS Order* and that the Commission "does not account for" these costs.[143] Securus fails to acknowledge the Commission's consideration of such costs when establishing its rate caps. In the *2024 IPCS Order*, the Commission "exclude[d] one-time implementation costs" when calculating the lower bounds for its rate caps, explaining that one-time costs "are inappropriate for inclusion in permanent rate caps."[144] The Commission nonetheless recognized that "providers' ongoing costs of implementing this Report and Order may, on balance, exceed their ongoing savings" under the new rules ("from, for example, not having to process site commission payments").[145] The Commission accordingly took "the conservative approach of setting [the] rate[] caps somewhat above the lower bounds."[146] Securus has not shown that it cannot recover its asserted compliance costs within the cushion allowed in the Commission's rate caps. Thus, Securus fails to demonstrate that that these costs are "beyond remediation."

36. Securus further alleges that {

]}[147] We find

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[139] In fact, record evidence instead suggests that renegotiation may be significantly less burdensome. *See 2024 IPCS Order* at 74, para. 137 n.466 (suggesting that contact renegotiation can be completed in a 30-day transition period, and finding arguments of "thousands of hours" of renegotiation unpersuasive (internal citation and quotation omitted)).

[140] Securus Stay Petition at 14.

[141] *See, e.g.*, *2024 IPCS Order* at 16, para. 26 n.96; *id.* at 20-21, para. 31 & n.123.

[142] *See, e.g.*, *id.* at 120-21, 301, paras. 217, 581. The *2024 IPCS Order* cited the Commission's previous estimate of demand elasticity for audio calling services from the *2021 ICS Order* and stated that it "continue[s] to rely on this demand elasticity estimate." *Id.* at 301, para. 581. In 2021, the Commission relied in part on estimates submitted by Securus and its consultant, FTI Consulting, Inc. *See 2021 ICS Order*, 36 FCC Rcd at 9608, para. 200 & n.610.

[143] Securus Stay Petition at 15 (addressing costs related to {

]}). *But see* Public Interest Parties Opposition at 7 (arguing that "Securus fails to provide any evidence to support the compliance costs its describes").

[144] *2024 IPCS Order* at 119, para. 214.

[145] *See id.*; *see also id.* at 108-09, 118-19, paras. 193, 213.

[146] *Id.* at 119, para. 214.

[147] Securus Stay Petition at 16; *see also* Dougherty Declaration at 5-6, paras. 18-22 (claiming that Securus {[

]}).

(continued….)

Securus has not substantiated this allegation. The *2023 IPCS Notice* specifically proposed both of the reforms in question thereby putting Securus on notice that such reforms were under consideration.[148] In particular, Securus should have prepared for the possibility of a per-minute video rate structure, especially given the Commission's historical prohibition on any pricing structure other than per-minute rates.[149] In sum, Securus has been on notice since March 2023, if not earlier, that these reforms might be adopted.[150] Securus also fails to acknowledge the availability of the waiver process, which seems particularly applicable to these concerns, given the variability in the relevance of the reforms in question to the practices of the industry as a whole.[151]

37. Based on the foregoing, we therefore conclude that Securus has failed to demonstrate any imminent, actual irreparable harm resulting from the *Order*.[152]

(Continued from previous page)
Securus further alleges that, in light of this compliance challenge, they will {[.]} Securus Stay Petition at 15.

[148] *See 2023 IPCS Notice*, 38 FCC Rcd at 2688, para. 46 (proposing that providers be required to offer video communications services at per-minute rates), 2698-99, paras. 75-76 (observing that "[w]ith the addition of this new category of services to the definition of 'advanced communications services,' some of these services, as well as some equipment used for such services, regardless of technology used, may be newly subject to accessibility requirements under section 716 of the Communications Act," and proposing to amend the Part 14 definition to conform with the statutory definition).

[149] The disability access requirements identified by Securus are primarily concerned with codifying the expanded definition of "advanced communications services" established by the Martha Wright-Reed Act into the Commission's Part 14 rules. *See 2024 IPCS Order* at 253-55, paras. 483-85. Indeed, as the Commission observed, "[t]he record does not indicate to what extent, if at all, there are other audio and video communication services offered by IPCS providers that were not previously included in the definitions of 'telecommunications service' or 'advanced communications services,' and that, accordingly, are newly subject to accessibility requirements under section 716 of the Communications Act and Part 14 of our rules." *Id.* at 255, para. 485. Securus fails to explicate whether, let alone the extent to which, their services and equipment are newly subject to these accessibility requirements.

[150] Securus previously suggested that the reforms in question would require 12 months to implement. *See* Letter from Michael H. Pryor, Brownstein Hyatt Farber Schreck, LLP, Counsel to Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, at 27-29 (filed July 11, 2024). By November 19, 2024, over 19 months will have elapsed since the publication of the *2023 IPCS Notice*, allowing Securus ample time to begin preparing for the contemplated reforms. Indeed, Securus seems to have actively contemplated the adoption of per-minute rates for video communications in its own comments in this proceeding. *See, e.g.*, Letter from Michael H. Pryor, Brownstein Hyatt Farber Schreck, LLP, Counsel to Securus Technologies, LLC, and Marcus W. Trathen and Christopher B. Dodd, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, Attach. B, Joint Report by FTI Consultants and Wood and Wood, at 29-30, paras. 56-57 (filed June 10, 2024) (addressing the interquartile range (IQR) methodology applied by Securus's consultant – the approach recommended by Securus for determining rate caps – which derived per-minute video calling rates from providers' cost data).

[151] *See, e.g.*, *2024 IPCS Order* at 102, para. 183 n.653 (observing that Securus "does not quantify or otherwise substantiate" its claim that the new rules impose significant and new operational obligations, "nor does it demonstrate that the waiver process would be inadequate to address any unusual implementation costs that theoretically might arise for a given provider"); *id.* at 237-38, para. 443 (recognizing that "some providers have priced video services at flat rates, and others have priced video services by the minute").

[152] Securus argues that without a stay, it will "lose its ability to challenge the Order's 60-day compliance date." Securus Stay Petition at 16. Securus does not explain how legal challenge will be impossible, and we decline to entertain such unsupported claims.

C. Securus Has Not Shown that a Stay Is In the Public Interest and Would Not Harm Other Parties

38. Staying the *2024 IPCS Order* is not in the public interest, as a stay would inhibit or delay the Commission's ability to fulfill statutory obligations and policy objectives mandated by the Martha Wright-Reed Act and necessary to protect consumers.

39. Securus's primary argument that granting a stay would benefit the public interest is that, by "'undermining the investment-backed expectations of correctional facilities for their safety and security costs,' the Order 'could ultimately lead to a reduction in IPCS access or the loss of essential law-enforcement tools,'" with consequent "increases in crime, fraud, or violence for both incarcerated people and their friends and family."[153] The Commission found similar concerns raised in the record to be generally unsupported,[154] and Securus offers no further substantiation for such claims. Nevertheless, the Order explicitly accounts for these theorized harms by "extend[ing] the transition deadlines" for the new rate cap and site commission rules,[155] which Securus fails to acknowledge.[156]

40. Securus further argues that {[ ]} as a purported consequence of the losses it may face, offering this both as an irreparable harm as well as a result inimical to the public interest.[157] We are unconvinced by such speculation. The Commission is tasked with establishing a compensation plan that results in both just and reasonable rates for IPCS and fair compensation for IPCS providers. Contrary to Securus' claims, the rate setting methodology used by the Commission in the *2024 IPCS Order* accounted for the costs of research and development.[158] Securus also fails to recognize the varied benefits of lower prices and other reforms adopted in the *2024 IPCS Order*, such as increased demand for IPCS.[159]

41. By contrast, granting a stay would be contrary to the public interest because it would delay the benefits of comprehensive reform and otherwise inhibit the Commission's ability to protect consumers. A stay would effectively force consumers to pay prices above the just and reasonable rates determined in the *2024 IPCS Order* over a prolonged period, while also delaying the associated reforms

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[153] *Id.* at 17 (quoting *2024 IPCS Order* at 465 (Statement of Commissioner Carr)).

[154] *See 2024 IPCS Order* at 166-67, 209, 307-08, paras. 311-12, 390 n.1399, 594; *id.*, Appx. J at 455-56, para. 7.

[155] *Id.* at 465 (Statement of Commissioner Carr); *see also id.* at 304-08, paras. 587-94 (discussing the extended timeframes for implementing the new rate cap and site commission rules).

[156] Securus also bemoans the fact that "many [incarcerated people] will not see the benefits from the rate caps until 2026," and at the same time complains that those people "will lose out on the updated communications platforms and offerings" that Securus is allegedly stymied from offering due to requirements that apply before 2026. Securus Stay Petition at 17. The reforms adopted in the *2024 IPCS* Order necessarily entail a mix of costs and benefits to all parties with an interest in these proceedings. A stay would only further delay the benefits to incarcerated people from these reforms, a consequence Securus appears to concede is against the public interest.

[157] Securus Stay Petition at 16 (citing "{[ ]}"); Dougherty Declaration at para. 24.

[158] *See 2024 IPCS Order* at 38, para. 71 (finding that "a provider will be fairly compensated if the rates and fees it is permitted to charge will afford it an opportunity to recover industry-average costs associated with prudent investments used and useful in providing IPCS and associated ancillary services at the facilities the provider serves"); *id.* at 90, para. 159 ("Under the used and useful framework the Commission . . . looks to the 'equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them'."); *cf. id.* at 121, para. 217 (observing that "providers' continuing expansion of an investment into their video IPCS services" will likely result in decreasing providers' average costs per minute); *id.* at 154-55, para. 287 (addressing the use of site commissions to fund social welfare programs "or other costs unrelated to the provision" of IPCS); *see also 2024 IPCS Order* at 62, para. 121, n.398; *id.*, Appx. D at 370, nn.5-6.

[159] *See id.* at 16-18, para. 27.

that also inure to the public's benefit.[160] For example, and as the Commission observed in the Order, consumers stand to gain from the elimination of ancillary service charges, which are a source of consumer confusion and detrimental provider practices.[161] The public interest in seeing the Commission's reforms take effect on the schedule prescribed in the *2024 IPCS Order* is especially pronounced given the length of time that incarcerated persons and their friends and family have already shouldered undue financial burdens to keep in touch, particularly when Congress expressly directed the Commission to enact regulations to implement the Martha Wright-Reed Act within 24 months from the statute's enactment.[162]

42. For all these reasons, we find that Securus has not shown that a stay is in the public interest and would not harm other parties.

IV. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, this Order Denying Stay Petition in WC Docket Nos. 23-62 and 12-375 IS ADOPTED.

44. IT IS FURTHER ORDERED, that the Petition of Securus Technologies, LLC for Stay Pending Judicial Review of the Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking (FCC 24-75) is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[160] *See, e.g.*, *id.* at 308, para. 594 ("Any further delays in requiring compliance with our rate cap and site commission reforms risks perpetuating unjust and unreasonable rates and charges for IPCS consumers or yielding unfair compensation for IPCS providers, contrary to the directives of the Martha Wright-Reed Act."); *id.* at 3-4, 229-30, 261-63, 277-78, 301-04, paras. 3, 427-28, 499-501, 530-31, 579-86 (discussing the compelling public interests served by the Order's reforms); Public Interest Parties Opposition at 8 (explaining that "[d]elayed implementation of the new rates would add many millions of dollars of financial burden for incarcerated people and their families each year").

[161] *See 2024 IPCS Order*, at 224-26, 227-29, paras. 418-19, 421-26.

[162] *See id.* at 6-12, paras. 9-20 (recounting over a decade of reform efforts); Martha Wright-Reed Act § 3(a). Additionally, as the Public Interest Parties argue, "[a] stay will cause tremendous harm by depriving consumers of the lower rates, and increased family connection, that Congress sought to achieve through the [Martha Wright-Reed Act]." Public Interest Parties Opposition at 9. "Such delay would prevent many incarcerated people from the health, safety, and wellbeing benefits that reliable communications with their loved ones could bring." *Id.* at 9-10; *see also* Stephen Raher Opposition at 5 (noting that the "public would be harmed by granting the Petition because a stay would extend the long history of unreasonable IPCS rates, even though lowering these rates was the primary motivation behind the enactment of the [Martha] Wright-Reed Act").

PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU APPROVES SDF, INC.'S CONTRABAND INTERDICTION SYSTEM CERTIFICATION APPLICATION UNDER PHASE ONE OF THE AUTHORIZATION PROCESS

GN Docket No. 13-111

I. INTRODUCTION

1. With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) approves the Contraband Interdiction System (CIS) certification application filed by SDF, Inc.,[1] subject to the conditions described below. SDF's CIS Application was filed under phase one of the Commission's two-phase process for certifying CIS for use in the submission of qualifying requests to disable contraband wireless devices in correctional facilities. Approval of SDF's CIS Application allows it to market and sell its CIS as described in its application, and begin phase two testing. SDF may begin using its CIS in conjunction with any Designated Correctional Facility Official's (DCFO's)[2] submission of qualifying requests for contraband wireless device disabling only after successful completion of the phase two testing and self-certification process.

II. BACKGROUND

2. In the *Second Report and Order*, the Commission adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria.[3] The process of certifying CIS for this purpose consists of two phases: (1) CIS applicants submit certification applications to the Bureau describing the legal and technical qualifications of the systems; and (2) CIS applicants perform on-site testing of certified CISs at individual correctional facilities and file self-certifications with the Bureau confirming that the testing at a specific correctional facility was

[1] Application of SDF, Inc. for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Apr. 17, 2024) (SDF CIS Application); First Supplement to Application of SDF, Inc. for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed July 10, 2024) (SDF CIS First Supplement), https://www.fcc.gov/ecfs/document/10710046609118/1; Second Supplement to Application of SDF, Inc. for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed July 10, 2024) (SDF CIS Second Supplement), https://www.fcc.gov/ecfs/document/10710046609118/2; Letter from Todd Slamowitz, Counsel to SDF, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-111 (filed Oct. 1, 2024) (SDF *Ex Parte*) (explaining that, among other things, ownership of SDF was transferred to Oren Pelleg on September 22, 2024).

[2] *See* 47 CFR § 20.3 (defining a Designated Correctional Facility Official); *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11818-21, paras. 12-20 (2021) (*Second Report and Order*); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Erratum (rel. Aug. 3, 2021).

[3] *See Second Report and Order*, 36 FCC Rcd at 11814, para. 2.

completed successfully.[4] Following WTB review and approval of the phase one CIS certification applications that meet applicable requirements, stakeholders using certified CISs may begin phase two on-site testing at individual correctional facilities. After both phases are complete, and the period for filing objections has lapsed,[5] DCFOs are authorized to submit qualifying requests to wireless providers to disable contraband devices located at a CIS approved/tested correctional facility. The Bureau began accepting CIS certification applications on May 3, 2022.[6] The Bureau has approved six CIS applications under phase one of the two-phase CIS certification process to date.[7]

3. *SDF CIS Application.* SDF filed its CIS Application on April 17, 2024, and filed two amendments to that application on July 10, 2024.[8] The Bureau issued a Public Notice announcing that SDF's CIS Application had been found complete and inviting stakeholders to review and file comments on the application on July 10, 2024.[9] No comments were received in response.

III. APPROVAL OF PHASE ONE CIS APPLICATION

4. After careful review of the application, we find that the CIS application filed by SDF satisfies the eligibility criteria and application requirements, as specified in section 20.23 of the Commission's rules, the *Second Report and Order*, and the *Guidance Public Notice*.[10] As directed by the Commission in the *Second Report and Order*, the Bureau issued the *Guidance Public Notice* to provide guidance on the information required for inclusion in a CIS certification application and on the procedures for the submission of an application.[11] Specifically, phase one of the CIS certification application process requires an applicant to describe the legal and technical qualifications of, and provide a test plan for, the system that the applicant seeks to use as the basis for qualifying requests for contraband device disabling.[12] We briefly discuss each of the phase one application requirements in turn below.

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[4] *See Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38.

[5] *See* 47 CFR § 20.3(c) (absent objections from a wireless provider . . . the DCFO may submit a qualifying request to a wireless provider beginning on the sixth business day after the later of the self-certification filing or actual service . . .).

[6] *Wireless Telecommunications Bureau Begins Accepting Contraband Interdiction System Certification Applications and Designated Correctional Facility Official Requests*, GN Docket No. 13-111, Public Notice, DA 22-475 (WTB 2022).

[7] *Wireless Telecommunications Bureau Approves Five Contraband Interdiction System Certification Applications Under Phase One of the Authorization Process*, GN Docket No. 13-111, Public Notice, DA 23-547 (WTB 2023) (approving applications filed, respectively, by: CellBlox Acquisitions, LLC; ShawnTech Communications, Inc.; Tecore Networks; SOC, LLC; and OmniProphis Corporation); *see also Wireless Telecommunications Bureau Approves Trace-Tek, LLC's Contraband Interdiction System Certification Application Under Phase One of the Authorization Process*, GN Docket No. 13-111, Public Notice, DA 24-242 (WTB 2024) (approving an application filed by Trace-Tek, LLC).

[8] *See generally supra* note 1.

[9] *Wireless Telecommunications Bureau Seeks Comment on SDF, Inc.'s Contraband Interdiction System Certification Application*, GN Docket No. 13-111, Public Notice, DA 24-668 (WTB 2024); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Protective Order, DA 23-223 (WTB 2023).

[10] *See* 47 CFR § 20.23; *Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Wireless Telecommunications Bureau Provides Guidance for Filing Contraband Interdiction System Certification Applications and Self-Certifications*, GN Docket No. 13-111, DA 21-1572, 2-3, paras. 6-8 (WTB 2021) (*Guidance Public Notice*).

[11] *Guidance Public Notice* at 2-4, paras. 5-6, 9-10.

[12] *Guidance Public Notice* at 2-4, paras. 5-10.

5. *CIS Certification Application Description*.[13] We find that SDF's CIS Application sufficiently described the legal and technical qualifications of its CIS. Further, in accordance with Commission rules, SDF demonstrated that:

(1) *Equipment Authorization*: all radio transmitters used as part of the CIS have appropriate equipment authorizations pursuant to Commission rules, by providing a certification to that effect;[14]

(2) *CIS Design/Methodology*: the CIS is designed and will be configured to locate devices solely within a correctional facility, and that the methodology to be used in analyzing data collected by the CIS is adequately robust to ensure that a particular wireless device is in fact located within a correctional facility. In this regard, SDF also provided:

- a description of the scope and overall function of the system;
- a description of the system architecture and configuration with diagrams;
- a description of the hardware and its functions;
- a description of the software and its functions;
- a description of the steps required and preparations needed to implement the CIS at any correctional facility (e.g., site surveys, engineering design, installation, and optimization);
- a description of how the CIS, if so required, interacts with a wireless provider network;
- a description of data analysis techniques; and
- a description of the key performance factors that indicate successful operation, including the expected level of percentage accuracy in the rate of detection of contraband devices vs. non-contraband devices using a relevant sample size (*e.g.*, number of devices to be observed and the length of observation period) and the rationale for the expectation;[15]

(3) *Data Security*: the CIS will secure and protect all data collected and/or information produced as part of its intended use, including a description of the types of data the CIS collects, whether the data is retained and for how long, and how the data is stored and protected;[16]

(4) *911 Calls*: the CIS will not interfere with emergency 911 calls, including a description

[13] *See* 47 CFR § 20.23(b)(1)(i)-(vi) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11821, para. 23; *Guidance Public Notice* at 2-3, para. 6.

[14] SDF CIS Application at 10; SDF First Supplement at 10. As an attachment to the SDF CIS Application filing in ECFS, SDF provided that its equipment is authorized under FCC ID 2BDKO-SEPTIER. We note that SDF formerly was a subsidiary of Septier Communications Ltd., and as of April 2024, SDF's equipment is now authorized under FCC ID 2BFW7-SDF. *See* SDF *Ex Parte* at 4-6; *see also supra* note 1.

[15] SDF CIS Application at 7-14; SDF First Supplement at 7-14, 22-26; SDF Second Supplement at 4-15. SDF provided information regarding its CIS design and methodology for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[16] SDF CIS Application at 15; SDF First Supplement at 13. SDF provided information regarding its CIS data security for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

of the methodology used for allowing emergency 911 calls to be permitted;[17] and

(5) *Spectrum/Network Access Agreement*: the applicant is aware that a CIS may require a spectrum or network access agreement (*e.g.*, a spectrum leasing arrangement or roaming agreement) to be authorized to operate by stating and describing whether the CIS requires such an agreement to operate.[18]

6. *CIS Certification Application Test Plan.* We also find that SDF's CIS Application included a test plan that can be adapted to the circumstances of each planned deployment at a specific correctional facility, and adequately demonstrated that the CIS's overall methodology for system design and data analysis ensures, to the greatest extent possible, that only devices that are in fact contraband will be identified for disabling.[19] Specifically, SDF included:

(1) A proposed evaluation of the functions that the CIS will perform;[20]

(2) A description of the testing device(s) placement and the number of testing devices that will be used at the correctional facility(ies);[21]

(3) A demonstration of how the placement and number of testing devices are sufficient to evaluate the CIS as the applicant intends to market and operate the system;[22]

(4) A demonstration that the testing will be randomized, and an explanation of why the number of devices and trials are statistically significant;[23]

(5) A description of the data to be collected, including the number of devices correctly and incorrectly identified and/or intercepted as contraband, and the number of emergency 911 calls made and impacted;[24] and

(6) the precise method to be used for calculating the accuracy of the CIS and verifying

[17] SDF CIS Application at 13-14, 17; SDF First Supplement at 13, 18, 24-25. SDF provided information regarding its routing of 911 calls for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[18] SDF CIS Application at 14; SDF Second Supplement at 10.

[19] *See* 47 CFR § 20.23(b)(1)(vii) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11822-23, paras. 26-27; *Guidance Public Notice* at 2-3, paras. 7-8.

[20] SDF CIS Application at 7, 14-15; SDF First Supplement at 7, 14-15, 25-26; SDF Second Supplement at 4-8. SDF provided information regarding its CIS proposed functions for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[21] SDF CIS Application at 16; SDF First Supplement at 16, 25-26; SDF Second Supplement at 9-15. SDF provided information regarding its CIS testing placement and number of testing devices for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[22] SDF CIS Application at 16-19; SDF First Supplement at 16, 25-26; SDF Second Supplement at 9-15. SDF provided information regarding how the placement and number of testing devices are sufficient to evaluate the CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[23] SDF CIS Application at 16-19; SDF First Supplement at 16-19, 25-26; SDF Second Supplement at 9-15. SDF provided information regarding its data validation methodology for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[24] SDF CIS Application at 16-19; SDF First Supplement at 16-19, 25-26; SDF Second Supplement at 9-15. SDF provided information regarding the description of the data to be collected by its CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

that emergency 911 calls are unaffected.[25]

IV. CONCLUSION

7. Based on our review, we approve, subject to the conditions below, SDF's CIS Application in the public interest. Through the issuance of this Public Notice,[26] SDF may market and sell its certified CIS as described in its application for ultimate use, following phase two testing, in obtaining information for the submission of qualifying requests for the disabling of contraband wireless devices.[27] SDF may begin the phase two on-site testing of its CIS at individual correctional facilities where SDF is authorized to operate—which is generally authorized pursuant to a spectrum manager or *de facto* transfer leasing arrangement—as outlined in the *Second Report and Order* and more specifically in section 20.23 of the Commission's rules.[28] We remind SDF that it must file a self-certification following completion of successful CIS testing.[29] The self-certifications must be filed using the Commission's Electronic Comment Filing System (ECFS) and must reference **GN Docket No. 13-111**.[30]

8. *Conditions.* This CIS certification application approval and SDF's use of its certified CIS for the ultimate submission of qualifying requests is conditioned on the following:

1) Testing of the certified CIS and its subsequent operation and use to support qualifying requests must be as specifically described in SDF's application as approved through this Public Notice;
2) A phase two testing self-certification, and a subsequently filed qualifying request, must be based upon information received from a certified CIS in deployed areas of each individual correctional facility where the CIS has been fully tested in real-time, live conditions consistent with the approved test plan;
3) The certified CIS must remain highly accurate regarding its:
   a) capability to identify only those devices physically located within the perimeter of operation; and
   b) ability to distinguish between contraband and non-contraband devices;
4) Approved CIS may be marketed and sold only to correctional facilities or entities that will provide contraband interdiction services to such facilities.

9. *Contact Information.* Questions regarding this *Public Notice* may be directed to Halie Peacher, Attorney Advisor, Wireless Telecommunications Bureau, Mobility Division at (202) 418-0514 or Halie.Peacher@fcc.gov.

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[25] SDF CIS Application at 17-18; SDF First Supplement at 16-19, 25-26; SDF Second Supplement at 9-15. SDF provided information regarding its method for calculating CIS accuracy for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[26] Bureau staff will also update the CIS/Correctional Facility Approval Status Tracker on the Commission's website to reflect this Phase I approval at https://www.fcc.gov/wireless/bureau-divisions/mobility-division/contraband-wireless-devices/disabling-process.

[27] *See* 47 CFR § 20.23(b)(2) (marketing and sales); *Second Report and Order*, 36 FCC Rcd at 11822, para. 25.

[28] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Guidance Public Notice* at 4-6, paras. 12-19. The spectrum leasing rules are outlined in part 1, subpart X of the Commission's rules. *See* 47 CFR pt. 1, subpt. X.

[29] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Guidance Public Notice* at 5, para. 14.

[30] *See Guidance Public Notice* at 5, para. 15; *see also Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1034
Released: October 7, 2024

BROADCAST STATION TOTALS AS OF SEPTEMBER 30, 2024

The Commission has announced the following totals for broadcast stations licensed as of September 30, 2024:

AM STATIONS	4,400		
FM COMMERCIAL	6,618		
FM EDUCATIONAL	4,377		
TOTAL		**15,395**	
UHF COMMERCIAL TV	1,026		
VHF COMMERCIAL TV	358		
UHF EDUCATIONAL TV	268		
VHF EDUCATIONAL TV	114		
TOTAL		**1,766**	
CLASS A UHF STATIONS	348		
CLASS A VHF STATIONS	31		
TOTAL		**379**	
FM TRANSLATORS & BOOSTERS	8,894		
UHF TRANSLATORS	2,445		
VHF TRANSLATORS	647		
TOTAL		**11,986**	
UHF LOW POWER TV	1,501		
VHF LOW POWER TV	311		
TOTAL		**1,812**	
LOW POWER FM	1,967		
TOTAL		**1,967**	
TOTAL BROADCAST STATIONS			**33,305**

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1035
Released: October 3, 2024

COMMENT DATES FOR PROPOSED REVISIONS TO INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES PROVIDERS' ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

WC Docket Nos. 23-62, 12-375

Comments Due: November 4, 2024
Reply Comments Due: November 18, 2024

By this Public Notice, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau (collectively, the Bureaus) of the Federal Communications Commission announce that comments in response to their *September 2024 Public Notice* are due no later than **November 4, 2024**, and reply comments are due no later than **November 18, 2024**.[1]

On September 11, 2024, the Bureaus released a Public Notice inviting supplemental comment to refresh and expand upon the record regarding the annual reporting and certification requirements for providers of incarcerated people's communications services (IPCS). That Public Notice requires that comments and reply comments be filed no later than 30 and 45 days after publication in the Federal Register, respectively.[2] On October 3, 2024, the Federal Register published a summary of the Public Notice, establishing November 4, 2024 as the deadline for comments and November 18, 2024 as the deadline for reply comments.[3] The *September 2024 Public Notice* and the *Federal Register Notice* contain complete filing instructions.[4]

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

For further information, please contact Simon Solemani, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-2270 or via e-mail at Simon.Solemani@fcc.gov or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at Michael.Scott@fcc.gov.

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[1] *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 24-918 (WCB/CGB Sept. 11, 2024) (*September 2024 Public Notice*).

[2] *Id.* at 1.

[3] Federal Communications Commission, *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, 89 Fed. Reg. 80449 (Oct. 3, 2024) (*Federal Register Notice*).

[4] *See September 2024 Public Notice* at 4; *Federal Register Notice*, 89 Fed. Reg. at 80449.

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 24-1036
October 4, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 39 (TENNESSEE) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES TO HOLD PLANNING MEETINGS

WT Docket 02-378 and PS Docket 23-237

The Region 39 (Tennessee) 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two planning meetings on Tuesday, October 29, 2024. Beginning at 10:00 am, the 800 MHz RPC meeting will convene at the Williamson County Public Safety Communications Building, Classroom 133, 304 Beasley Dr., Franklin, TN 37064. The 700 MHz RPC meeting will convene following the 800 MHz RPC meeting. Both meetings will be held virtually, as well as in-person. Please register no later than **COB, October 25, 2024**.

To Register:

- Send an email to: John Johnson, Secretary at publicsafetyradio@comcast.net.
- Your email registration should include your name, agency, email address, phone number and whether you will attend virtually or in-person.

The agenda for the 800 MHz RPC meeting includes:

- Introduction/Welcome/Minutes
- Old Business
- New Business
- Election of Officers – Chair, Vice Chair, Secretary (Two-year term)
- Application Review Committee Volunteers
- Adjourn

The agenda for the 700 MHz RPC meeting includes:

- Introduction/Welcome/Minutes
- Old Business
- New Business
  - 700 MHz State License Channels Update
  - TACN Expansion Update
- Application Review Committee Volunteers
- Adjourn

Both Region 39 RPC meetings are open to the public. All eligible public safety providers in Region 39 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs. All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 39 should plan to attend.

For further information, please contact:

Jesse Griggs
Chair, Region 39 800 MHz RPC
Tennessee Department of Correction (Retired)
816 Tilghman Street
Kenton, TN 38233
(901) 483-4883
Email: jgriggs158@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

DA 24-1037
October 3, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU PROVIDES ADDITIONAL GUIDANCE ON CONFIDENTIAL FILING REQUIREMENTS FOR CYBERSECURITY LABEL ADMINISTRATOR AND LEAD ADMINISTRATOR APPLICATIONS UNDER THE CYBERSECURITY LABELING FOR INTERNET OF THINGS PROGRAM

PS Docket No. 23-239

By this Public Notice, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) provides additional guidance on procedures for filing applications for Cybersecurity Label Administrator (CLA) and Lead Administrator. On September 10, 2024, the Bureau released a Public Notice announcing a 15-business day filing window for applications from entities seeking designation by the Commission as a CLA and/or Lead Administrator, which opened on September 11, 2024.[1] The Bureau extended the application deadline to October 11, 2024.[2] Today's guidance supplements the previous instructions set forth by the earlier Public Notice released September 10, which continue to apply.[3]

Applicants must file an original and one copy of each application and supporting materials with the Office of the Secretary, Federal Communications Commission. To ensure the application is treated confidentially, the applicant should:

- Include a cover page with the statement: "**This application has been determined by the Federal Communications Commission to be presumptively confidential and not for public inspection**."
- Each page of the application must be clearly and conspicuously labeled "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION**."
- Applicants should **NOT** file their applications in the Commission's Electronic Comment Filing System (ECFS).

Applications filed with the Office of the Secretary can be sent by hand or messenger delivery by commercial overnight courier, or First-Class or overnight U.S. Postal Service mail.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. at 9050 Junction Drive, Annapolis

[1] *Public Safety and Homeland Security Bureau Announced 15-Business Day Filing Window for Cybersecurity Labeling Administrator and Lead Administrator Applications Under the Cybersecurity Labeling for Internet of Things Program*, Public Notice, PS Docket No. 23-239, (Sept. 10, 2024) (*Public Notice*).

[2] *Cybersecurity Labeling for Internet of Things*, Order Granting Extension of Time, PS Docket No. 23-239, (Sept. 26, 2024).

[3] *See Public Notice* at 24, Appx. A (General Filing Instructions).

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

In addition to the filing with the Secretary's Office, an electronic version of the application and supporting material is required to be submitted to Bureau staff as a .pdf file via email to CyberTrustMark@fcc.gov. **The document must be password protected and the password communicated in a separate email to** CyberTrustMark@fcc.gov. Submissions may be broken into multiple emails when necessary.

Applications should be received by the Commission as soon as possible, but no later than October 11, 2024. Applications received after October 11, 2024, will not be accepted and will be dismissed.

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.

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 24-1039
Released: October 3, 2024

THE FEDERAL COMMUNICATIONS COMMISSION DEACTIVATES THE DISASTER INFORMATION REPORTING SYSTEM (DIRS) IN FLORIDA AND VIRGINIA, AND NARROWS THE SCOPE OF DIRS IN GEORGIA AND TENNESSEE FOR COMMUNICATIONS IMPACTED BY HURRICANE HELENE

The Federal Communications Commission (FCC), at the request of the State of Florida and the Commonwealth of Virginia, and in coordination with the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Emergency Management Agency (FEMA), announces the deactivation of the Disaster Information Reporting System (DIRS) for the following counties in Florida and Virginia impacted by Hurricane Helene:

Florida: Hamilton.[1]

Virginia: Alleghany, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Franklin, Giles, Grayson, Highland, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

Further, the FCC, at the request of the States of Georgia and Tennessee, and in coordination with CISA and FEMA, announce deactivation of DIRS for the following counties affected by Hurricane Helene:

Georgia: Ben Hill, Bryan, Bulloch, Chatham, Cook, Dodge, Effingham, Hancock, Hart, Jenkins, Johnson, Liberty, Long, McIntosh, Pierce, and Wilkes.

Tennessee: Sevier.

Communications providers do not need to provide any additional reporting in DIRS for these areas in Florida, Georgia, Tennessee, and Virginia with respect to Hurricane Helene. 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. 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 areas in Florida, Georgia, Tennessee, and Virginia no longer covered by DIRS reporting for Hurricane Helene.[2]

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[1] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina,* Public Notice, DA 24-991 (rel. Sept. 25, 2024) ("*DIRS and MDRI Activation PN*").

[2] 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 communications, wireless, wireline, and interconnected VoIP providers required to report in DIRS pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS).

DIRS remains activated in the following counties:

Georgia: Appling, Bacon, Berrien, Burke, Candler, Charlton, Clinch, Coffee, Columbia, Echols, Emanuel, Glascock, Grady, Jeff Davis, Jefferson, Lanier, Lincoln, Lowndes, McDuffie, Montgomery, Richmond, Screven, Taliaferro, Tattnall, Telfair, Toombs, Treutlen, Warren, Wayne, and Wheeler.

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Unicoi, and Washington.

Please continue to provide information for the impacted counties that are already in the disaster area. ***DIRS deactivation does not release wireless providers from their responsibility to comply with MDRI requirements as noted in previous Hurricane Helene-related public notices***.[3] The FCC continues to monitor this event and may amend the DIRS and/or 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
Juan Chapa (202) 418-0431, juan.chapa@fcc.gov
John Healy (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 Helene, please go to www.fcc.gov/Helene.

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[3] *See DIRS and MDRI Activation PN; see also The Federal Communications Commission Announces the Expansion of the Disaster Information Reporting System and the Mandatory Disaster Response Initiative for Communications Impacted by Hurricane Helene,* Public Notice, DA 24-1015 (rel. Sept. 27, 2024).

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. 24-1040

Report No. SAT-01861 **Friday October 4, 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-AMD-20230406-00075 E S3156 The Tomorrow Companies, Inc.
Amendment
Grant of Authority Effective Date: 10/03/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20221201-00167 for a description of the action taken.

SAT-AMD-20240506-00094 E S3175 Sidus Space, Inc.
Amendment
Grant of Authority Effective Date: 10/01/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20230613-00141 for a description of the actions taken.

SAT-AMD-20240629-00146 E S2253 Intelsat License LLC
Amendment
Grant of Authority Effective Date: 10/03/2024

Nature of Service: Fixed Satellite Service

See ICFS File No. SAT-MOD-20221230-00182 for a description of the action taken.

SAT-LOA-20221201-00167 E S3156 The Tomorrow Companies, Inc.
Launch and Operating Authority
Grant of Authority Effective Date: 10/03/2024

Nature of Service: Earth Exploration Satellite Service

On October 3, 2024, the Satellite Programs and Policy Division granted, with conditions, authority to the Tomorrow Companies, Inc. to deploy and operate additional satellites as part of the Tomorrow.io Weather Constellation. Specifically, Tomorrow.io is authorized to deploy and operate up to 14 additional satellites in non-geostationary orbit for operations in the Earth exploration-satellite service (EESS), with operating altitudes for satellites between 500-580 km (± 20 km). The Tomorrow.io satellites are authorized to conduct telemetry, tracking, and command (TT&C) operations and EESS operations in the 8025-8400 MHz (space-to-Earth) and TT&C in the 2025-2110 MHz (Earth-to-space) frequency bands. The Tomorrow.io satellites will also engage in receive-only EESS (passive) operations in 90.13-92.65 GHz, 114.5-122.75 GHz, 182.19-191.31 GHz, and 202.04-205.8 GHz frequency bands .

SAT-LOA-20230613-00141 E S3175 Sidus Space, Inc.
Launch and Operating Authority
Grant of Authority Effective Date: 10/01/2024

Nature of Service: Earth Exploration Satellite Service

On October 1, 2024, the Satellite Programs and Policy Division granted, with conditions, authority to Sidus Space, Inc. to construct, deploy, and operate four low-Earth orbit, non-geostationary satellites, to be known as the LizzieSat-2 through LizzieSat-5, that would operate in the Earth exploration-satellite service (EESS) at an altitude of 550 kilometers (+/- 50 kilometers) and inclinations of 45.0 degrees (+/- 1.0 degrees) for the LizzieSat-2 satellite and 97.5 degrees (+/- 1.0 degrees) for the LizzieSat-3, LizzieSat-4, and LizzieSat-5 satellites. Sidus Space is authorized to operate in the following frequency bands: 8025-8400 MHz (space-to-Earth) for the EESS downlink, 2025-2110 MHz (Earth-to-space) for command uplink, and 2200-2290 MHz (space-to-Earth) for tracking and telemetry downlink.

SAT-MOD-20221230-00182 E S2253 Intelsat License LLC
Modification
Grant of Authority Effective Date: 10/03/2024

Nature of Service: Fixed Satellite Service

On October 3, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, as amended, for modification of the license for its Galaxy 11 space station to change the end of license term to October 31, 2024 and to specify operations at the 166.3° E.L. orbital location, instead of Galaxy 11's currently authorized location of 93.1° W.L. Intelsat is authorized to provide fixed satellite-service via Galaxy 11 at 166.3° E.L. in the 3700-4200 MHz (space-to-Earth), 5925-6425 MHz (Earth-to-space), 10.95-11.2 GHz (space-to-Earth), 11.7-12.2 GHz (space-to-Earth), and 13.75-14.5 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command with Galaxy 11 using the following center frequencies: 11.701 GHz and 11.702 GHz (space-to-Earth); and 14.0005 GHz and 14.4985 GHz (Earth-to-space).

SAT-MOD-20240618-00138 E S3156 The Tomorrow Companies, Inc.
Modification 08/16/2024 -
Grant of Authority Effective Date: 10/03/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20221201-00167 for a description of the action taken.

SAT-MOD-20240930-00209 E S2385 Intelsat License LLC
Modification
Withdrawn Effective Date: 10/03/2024

Nature of Service: Fixed Satellite Service

SAT-STA-20240610-00127 E Umbra Lab Inc
Special Temporary Authority
Granted in Part / Dismissed in Part Effective Date: 10/03/2024

Application listed as granted-in-part in ICFS to reflect continuing operations of the Umbra-04 space station pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62. See also SAT-STA-20240801-00167.

SAT-STA-20240829-00193 E S2253 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 10/03/2024

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

SAT-STA-20240926-00204 E S2385 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 10/01/2024

On October 1, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 30 days, to conduct telemetry, tracking and command operations necessary to de-orbit Galaxy 14 from the 32.9° E.L. orbital location using the center frequencies of 4198.0 MHz and 4199.875 MHz (space-to-Earth), and 6420.5 MHz (Earth-to-space).

SAT-STA-20240926-00205 E S3083 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 10/02/2024

Nature of Service: Fixed Satellite Service

On October 2, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 30 days, to operate the Galaxy 34 satellite at 129.0° W.L. with new seasonal coverage in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) 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 St., N.E.
Washington, D.C. 20554

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

DA 24-1041
Released: October 4, 2024

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION REMOVAL FROM STREAMLINED TREATMENT AND EXTENSION OF COMMENT PERIOD

WC Docket No. 19-99

Revised Filing Dates:

Comments Due: November 8, 2024
Reply Comments Due: November 22, 2024

The Wireline Competition Bureau (Bureau) hereby removes the application listed in this Notice from streamlined treatment pursuant to the Commission's procedures for interconnected VoIP numbering authorization applications, and extends the comment filing period.[1]

Interconnected VoIP Numbering Authorization Application Filed by NumberBarn, LLC, WC Docket No. 19-99, Public Notice, DA 24-984 (WCB Sept. 24, 2024).[2]

On September 26, 2024, the National Association of Regulatory Utility Commissioners (NARUC), timely filed a motion requesting a 30-day extension of the deadline for filing comments in this proceeding and to remove the application from a streamlined pleading cycle.[3] NARUC requests the extension to permit its member state public utility commissions an opportunity to comment on this application.[4] The applicant, NumberBarn, LLC (NumberBarn), timely filed an opposition to NARUC's motion on October 1, 2024, opposing both the extension of the comment period and the removal of the application from streamlined processing.[5]

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[1] 47 CFR § 52.15(g)(3)(iv) ("An application under this section is deemed granted by the Commission on the 31st day after the Commission releases a public notice stating that the application has been accepted for filing, unless the [Wireline Competition] Bureau notifies the applicant that the grant will not be automatically effective.").

[2] Interconnected VoIP Numbering Authorization Application Filed by NumberBarn, LLC, WC Docket No. 19-99, Public Notice, DA 24-984 (WCB September 24, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/10924005061749 (originally establishing the public comment deadline as October 9, 2024).

[3] *See* Motion of the National Association of Regulatory Utility Commissioners for Extension of Time and to Remove This Application from a Streamlined Pleading Cycle, WC Docket No. 19-99 (filed Sept. 24, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/10926270871273 (NARUC Motion). A motion may be made for an extension of time seven days prior to a comment filing date. 47 CFR § 1.45(b).

[4] *See* NARUC Motion at 3-4.

[5] *See* Opposition to Motion for Extension of Time, WC Docket No. 19-99 (filed Oct. 1, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/100170639531 (NumberBarn Opposition); *see also* 47 CFR §

As set forth in section 1.46 of the Commission's rules, it is the policy of the Commission that extensions of time shall not be routinely granted.[6] We find, however, that NARUC has shown good cause for an extension of the comment deadline. It explains that its member state public utility commissions seek to offer comments regarding numbering resources within their specific states that are relevant to NumberBarn's request, and that an additional 30 days will enable them to obtain requisite internal approvals to file their comments.[7] NumberBarn opposes the extension and has raised certain substantive arguments addressing why a grant of its application is in the public interest.[8]

Pursuant to section 52.15(g)(3)(v)(D-E) of the rules, this application is removed from streamlined processing to allow the Bureau to further analyze whether granting the application serves the public interest.[9] In addition, the comment deadline is extended from October 9, 2024 to **November 8, 2024**, and we also establish a reply comment date of **November 22, 2024** to provide the applicant and interested parties an opportunity to review and respond to any public comments received. Final action on this application should be expected after the Commission concludes its review.

For further information, please contact Jordan Reth, Competition Policy Division, Wireline Competition Bureau, at Jordan.Reth@fcc.gov, or (202) 418-1418.

– FCC –

1.45(b) ("Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.").

[6] *See* 47 CFR § 1.46.

[7] NARUC Motion at 3-4.

[8] NumberBarn Opposition at 2-3.

[9] *See* 47 CFR § 52.15(g)(3)(v)(A-E) (stating that the Bureau may notify an applicant that its application is being removed from streamlined processing if (1) an applicant fails to respond promptly to Commission inquiries; (2) an application is associated with a non-routine request for waiver of the Commission's rules; (3) an applicant would, on its face, violate a Commission rule in this chapter or the Communications Act; (4) timely filed comments on the application raise public interest concerns that require further Commission review; or (5) the Bureau determines that the application requires further analysis to determine whether granting the application serves the public interest.).

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

In the Matter of	)	
	)	
Promoting Consumer Choice and Wireless	)	WT Docket No. 24-186
Competition Through Handset Unlocking	)	
Requirements and Policies	)	

PROTECTIVE ORDER

Adopted: October 4, 2024 **Released: October 4, 2024**

By the Chief, Wireless Telecommunications Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed in this proceeding, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information submitted by participants in this proceeding and information we request as relevant and material to the issues raised constitute the record on which the Commission must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."[1]

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules,[2] that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

[1] 47 U.S.C. § 154(j).

[2] 47 CFR §§ 0.459, 0.461.

"Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the FOIA and the Commission's implementing rules; and that the Submitting Party or a Third-Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Protective Order, as the same may be amended from time to time; unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

"In-House Counsel" means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel's employer is considered his or her client.)

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Party" means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend

recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

"Third-Party Interest Holder" means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party's representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.[3]

4. *Challenge to Designation*. Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.[4] Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.[5]

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped

[3] *See* 47 CFR § 0.459(a).

[4] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

[5] *See* 47 CFR §§ 0.459(h), 0.461.

Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System (ECFS) a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.[6] Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information. In addition, one copy of each Stamped Confidential Document and Stamped Highly Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Jennifer Salhus, Jennifer.Salhus@fcc.gov, Wireless Telecommunications Bureau; and Grant Lukas, Grant.Lukas@fcc.gov, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

6. *Copying Sensitive Documents*. If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*[7] Each Submitting Party and Third-Party

[6] If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary's Office along with the appropriately stamped cover letter.

[7] This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that

Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.[8] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

10. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. A Submitting may, but is not required to, transmit the information electronically to a Reviewing Party. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no

certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

[8] An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential and Highly Confidential Information*. Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure*. A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission*. A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION—SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 24-186 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.[9] The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED—FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Jennifer Salhus, Jennifer.Salhus@fcc.gov, Wireless Telecommunications Bureau; and Grant Lukas, Grant.Lukas@fcc.gov, Wireless Telecommunications Bureau, Federal Communications

[9] If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

16. *Requests for Additional Disclosure*. If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.[10]

17. *Client Consultation*. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

18. *No Waiver of Confidentiality*. Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *Subpoena by Courts, Departments, or Agencies*. If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited

[10] 47 CFR §§ 0.442, 0.461.

to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions*. Substantive questions concerning this Protective Order should be addressed to 0Jennifer Salhus, Jennifer.Salhus@fcc.gov, Wireless Telecommunications Bureau; and Grant Lukas, Grant.Lukas@fcc.gov, Wireless Telecommunications Bureau.

23. *Authority*. This Order is issued pursuant to sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), and authority delegated under section 0.261 of the Commission's rules, 47 CFR § 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Stamped Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share, or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides numbers of customers and revenues broken down by customer type (e.g., business) and zip code or market area (e.g., CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market, and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, or maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B

Acknowledgment of Confidentiality

WT Docket No. 24-186

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 20___.

_____

[Name]
[Position]
[Firm]
[Telephone]

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1043
Released: October 4, 2024

WIRELESS TELECOMMUNICATIONS BUREAU GRANTS 900 MHZ BROADBAND SEGMENT APPLICATIONS

WT Docket No. 17-200

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the grant of five 900 MHz broadband segment license applications (see Appendix). On May 13, 2020, the Commission realigned the 900 MHz band to make available six megahertz of low-band spectrum for the development of critical wireless broadband technologies and services, while reserving the remaining four megahertz of spectrum for continued narrowband operations.[1] In accordance with the *900 MHz Report and Order*,[2] the Bureau announced that the opening date for acceptance of 900 MHz broadband segment applications began on May 27, 2021.[3]

The Bureau finds the 900 MHz broadband segment applications listed in the Appendix to be complete and in conformance with the Commission's rules. No petitions to deny these applications were filed, and the applications sufficiently demonstrate conformance with the eligibility conditions (Eligibility Certification) and requirements for transitioning the 900 MHz band in the particular county requested (Transition Plan).[4] Furthermore, the Commission has received full anti-windfall payments for the licenses listed in the Appendix, as required by section 27.1503(c)(2). Therefore, the Bureau finds that granting the applications for the 900 MHz broadband segment licenses listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the licenses listed in the Appendix. We grant these licenses pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. These new 900 MHz broadband licensees may begin operation in the applicable counties, subject to protection of covered incumbents.[5]

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[1] *Review of the Commission's Rules Governing the 896–901/935–940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Order, 35 FCC Rcd 5183 (2020) (*900 MHz Report and Order*).

[2] *Id.* at para. 113.

[3] *See Wireless Telecommunications Bureau to Accept 900 MHz Broadband Segment Applications Beginning May 27, 2021*, WTB Docket No. 17-200, Public Notice, 36 FCC Rcd 7377 (WTB 2021) (*900 MHZ Broadband Segment Applications Public Notice*).

[4] 47 CFR § 27.1503; *see also 900 MHz Broadband Segment Applications Public Notice, Attachment A*.

[5] A Covered Incumbent is any 900 MHz site-based licensee in the broadband segment that is required under section 90.621(b) to be protected by a broadband licensee with a base station at any location within the county, or any 900 MHz geographic-based SMR licensee in the broadband segment whose license area completely or partially overlaps the county. 47 CFR § 27.1501(g).

We remind licensees that they should review the Commission's part 27 rules and all Commission orders and public notices establishing rules and policies for the 900 MHz band.[6] Each licensee is solely responsible for complying with all FCC rules and regulations associated with these licenses.

This Public Notice includes one appendix, which is included at the end of this document: Appendix – 900 MHz Broadband Segment Licenses Granted – Sorted by Licensee

Applicants who have questions concerning this Public Notice may contact Morgan Mendenhall of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-0154, morgan.mendenhall@fcc.gov.

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

[6] *See* 47 CFR pt. 27; *see also 900 MHz Report and Order*, 35 FCC Rcd 5183; *900 MHz Broadband Segment Applications Public Notice*.

APPENDIX

900 MHZ BROADBAND SEGMENT LICENSES

APPLICATIONS GRANTED

SORTED BY LICENSEE

Licensee Name	File Number	FRN	Market/County Number (FIPS)	Market Description	Mandatory Relocation[7]
PDV Spectrum Holding Company, LLC	0011161579	0023948573	D48439	Tarrant County, TX	N/A
PDV Spectrum Holding Company, LLC	0011161583	0023948573	D48085	Collin County, TX	N/A
PDV Spectrum Holding Company, LLC	0011167125	0023948573	D48139	Ellis County, TX	N/A
PDV Spectrum Holding Company, LLC	0011122454	0023948573	D19073	Greene County, IA	N/A
PDV Spectrum Holding Company, LLC	0011185285	0023948573	D48309	McLennan County, TX	N/A

[7] Section 27.1504 permits a broadband licensee to relocate mandatorily certain incumbents from the 900 MHz broadband section. Incumbent licensees identified for mandatory relocation by new licensees will appear in this column. When there are no incumbent licensees identified for mandatory relocation, N/A will appear.

PUBLIC NOTICE

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

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

DA 24-1044
Released: October 4, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF BRIGHTSPEED OF VIRGINIA, LLC BY CENTRAL VIRGINIA SERVICES, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-311

Comments Due: October 18, 2024
Reply Comments Due: October 25, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Brightspeed of Virginia, LLC (Brightspeed VA) and Central Virginia Services, Inc. (CVSI) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the transfer of Brightspeed's Rural Digital Opportunity Fund (RDOF) support and related buildout and service obligations associated solely with Census Block Group No. 511139302003 (Transferring CBG) to CVSI.[2]

Brightspeed VA, a Virginia corporation, is a wholly-owned subsidiary of Connect Holding II d/b/a Brightspeed (Brightspeed).[3] Brightspeed VA provides broadband and telecommunications services, primarily as an incumbent local exchange carrier (LEC), but it is not the incumbent LEC in the Transferring CBG.[4] Brightspeed VA is designated as an Eligible Telecommunications Carrier (ETC) in Virginia and the Commission authorized Brightspeed VA to receive $12,518,109.10 in RDOF

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

[2] *See* Domestic Section 214 Application for Acquisition of Certain Assets of Brightspeed of Virginia, LLC by Central Virginia Services, Inc., WC Docket No. 24-311 (filed Sept. 24, 2024) (Application). Applicants filed a supplement to the Application on October 3, 2024. Letter from Todd B. Lantor, Counsel to Central Virginia Services, Inc., to Marlen H. Dortch, Secretary, FCC, WC Docket No. 24-311 (filed Oct. 3, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 2-3.

[4] *Id.* at 3.

support in Virginia[5] of which, Applicants state, $2,351,220.00 was allocated for an estimated 679 locations in the Transferring CBG, which is entirely in Madison County, Virginia.[6]

CVSI, a Virgina corporation, provides high-speed, fiber-optic internet and interconnected VoIP-based voice services in portions of central Virginia.[7] Applicants state that CVSI provides gigabit-tier level of broadband and interconnected VoIP-based voice services across its entire broadband service areas.[8] On June 8, 2021, the Commission released an Order granting designation of CVSI as an ETC[9] and CVSI was subsequently authorized to receive $33,958,890.50 in RDOF support in Virginia to provide service to 28,339 locations.[10] CVSI is a wholly-owned subsidiary of Central Virginia Electric Cooperative (CVEC), a rural electric cooperative, which is owned by its members and controlled by its board of directors (all U.S. citizens).[11] Applicants state that no individual or entity holds a ten percent or greater interest in CVSI.[12]

Pursuant to the terms of the proposed transaction, Brightspeed VA would transfer the RDOF obligations and the majority of past and future RDOF funding associated with the Transferring CBG to CVSI, who has agreed to accept all future RDOF compliance obligations for the Transferring CBG,

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[5] *Rural Digital Opportunity Fund Support Authorized for 830 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 6072, Attach. A at 2-3 (WCB/OEA 2022) (*Ninth Authorization Public Notice*) (authorizing CVSI to receive RDOF support). Applicants explain that Central Telephone Company of Virginia changed its name from Central Telephone Company of Virginia d/b/a CenturyLink after it was acquired from Lumen Technologies, Inc. on October 1, 2022. Application at 3; *see also Lumen Technologies, Inc. and Connect Holding LLC Application for Consent to Transfer Control*, WC Docket No. 21-350, Memorandum Opinion and Order and Declaratory Ruling, 37 FCC Rcd 9523 (WCB, IB, WTB 2022).

[6] Application at 3-4; Supplement Letter at 1. We note that the Bureau has been directed to adopt revised location obligations no later than the end of program's sixth year using a listing of all qualifying locations within eligible areas *See Rural Digital Opportunity Fund et al,* WC Dockets 19-126, 10-90, Order, 35 FCC Rcd 686, 709, para. 45 (2020). The Study Area Code (SAC) currently associated with the Transferring CBG is 190254 (Brightspeed VA), and under the Agreement, the Transferring CBG would be transferred to the study area code associated with CVSI's authorized RDOF support in the same state (SAC 199021). Application at.1. *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 4897, Attach. A at 2-6 (AU/WCB 2022) (*RDOF Eighth Authorization*) (authorizing CVSI to receive RDOF support for SAC 199021). The Bureau will confirm the stated support amounts associated with the Transferring CBG prior to the authorization of CVSI to receive the support.

[7] Application at 4.

[8] *Id*. at 3-4.

[9] *Id*. at 5. *Telecommunications Carriers Eligible for Universal Service Support, et al*., WC Docket Nos. 09-197, 10-90, Order, 33 FCC Rcd 9384 (WCB 2021) (designating CVSI expanded ETC designation in order to become eligible to receive RDOF support). We note that CVSI was previously authorized to receive CAF Phase II support in Virginia. *Telecommunications Carriers Eligible for Universal Service Support*, et al., WC Docket Nos. 09-197, 10-90, Order, 34 FCC Rcd 1966 (WCB 2019) (designated CVSI as an ETC in order to become eligible to receive CAF Phase II support); *see also* Connect America Fund Phase II Auction 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 2-5 (AU/WCB 2019).

[10] *RDOF Eighth Authorization*, 37 FCC Rcd 4897, Attach. A at 2-6.

[11] Application at 5; Supplement at 1.

[12] *Id*. at 12.

subject to regulatory approval.[13] Applicants state that, post-consummation, CVSI will "undertake the deployment of the RDOF-support network and integrate such activities and operations into its own ongoing operations and RDOF deployment."[14]

Applicants assert that the proposed transaction is in the public interest.[15] CVSI contends that, because of the close proximity of the Transferring CGB to CVSI's broadband service area, CVSI is "well-positioned to complete the required buildout for the provision of RDOF-supported broadband and voice services in advance of the deadlines dictated by the Commission's RDOF rules.[16] Moreover, Applicants contend that the proposed transaction will not remove a competitor from the marketplace, rather the "transaction will further facilitate the implementation of the Commission's important RDOF program goals."[17] Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined treatment.[18]

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Brightspeed of Virginia, LLC by Central Virginia Services, Inc., WC Docket No. 24-311 (filed Sept. 24, 2024).

GENERAL INFORMATION

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

Interested parties may file comments 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.**

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[13] Although Brightspeed VA has not deployed any facilities in the Transferring CBG, Applicants state that Brightspeed plans to "retain $189,431 for RDOF planning costs previously incurred" but will not retain any RDOF support associated with its pre-authorization expenses. *Id*. at 2.

[14] *Id*. at 6. CVSI is contemporaneously filing a petition with the Commission to expand its ETC designation to include the RDOF-funded census blocks in the Transferring CBG which, if granted, will make CVSI eligible to receive RDOF and federal Lifeline support in the Transferring CBG. *Id*. at 5. *See* Petition of Central Virginia Services, Inc. for Expanded Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Sept. 25, 2024). CVSI commits to offering Lifeline services throughout the Transferring CBG. Application at 5.

[15] Application at 7.

[16] *Id*. at 8.

[17] *Id*. at 9.

[18] 47 CFR §63.03(c)(1)(v).

- 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).

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

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

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[19] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission. For further information, please contact Dennis Johnson at (202) 418-0809.

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[19] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

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

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

DA 24-1045
Released: October 7, 2024

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

WC Docket No(s). 24-123, 24-289 & 24-290

Comments Due: October 22, 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 **November 7, 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

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **October 22, 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.

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[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): Metropolitan Telecommunications d/b/a MetTel (MetTel)**
WC Docket No. 24-123, Comp. Pol. File No. 1906
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-123%22))
Affected Service(s) – local exchange and domestic long distance services
Service Area(s) – New York
Authorized Date(s) – November 7, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On October 3, 2024, MetTel filed a supplemental letter to clarify certain details regarding the proposed discontinuance.

2) **Applicant(s): Metropolitan Telecommunications Corporation of PA LLC d/b/a MetTel (MetTel)**
WC Docket No. 24-289, Comp. Pol. File No. 1951
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-289%22))
Affected Service(s) – local exchange and domestic long distance services
Service Area(s) – Pennsylvania
Authorized Date(s) – on or after November 7, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On October 3, 2024, MetTel filed a supplemental letter to clarify certain details regarding the proposed discontinuance.

3) **Applicant(s): Manhattan Telecommunications Corporation of NJ LLC, d/b/a MetTel (MetTel)**
WC Docket No. 24-290, Comp. Pol. File No. 1952
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-290%22))
Affected Service(s) – local exchange and domestic long distance services
Service Area(s) – New Jersey
Authorized Date(s) – on or after November 7, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On October 3, 2024, MetTel filed a supplemental letter to clarify certain details regarding the proposed discontinuance.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1047
Released: October 7, 2024

MEDIA BUREAU ANNOUNCES EXTENSION OF TIME FOR BROADCASTERS IMPACTED BY HURRICANES HELENE AND MILTON TO FILE QUARTERLY ISSUES/PROGRAMS LISTS

As a result of the disruption in certain states from Hurricane Helene and the potential for additional disruption from Hurricane Milton, the Media Bureau hereby extends the filing deadline by which radio and television broadcasters in Florida, Georgia, North Carolina, South Carolina and Tennessee must place their third quarter issues/programs lists into their Online Public Inspection File from October 10, 2024, to November 10, 2024.[1] Extending these reporting deadlines will not significantly impact the public's or the Bureau's review of licensee's compliance with the Commission's rules. While we are extending these filing deadlines, we encourage licensees to file their quarterly issues/programs lists as soon as practicable.

Further, we emphasize that this *Public Notice* does not modify any requirements or filing deadlines related to stations' political files,[2] nor does it modify any other filing obligations or deadline related to broadcasters' public files.

For radio related questions, please contact Albert Shuldiner, Audio Division, Media Bureau, at 202-418-2721, or by email at Albert.Shuldiner@fcc.gov. For television related questions, please contact Barbara Kreisman, Video Division, Media Bureau, at 202-418-1605, or by email at Barbara.Kreisman@fcc.gov.

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.[3]

- FCC -

[1] *See* 47 CFR §§ 73.3526(e)(11)(i), (e)(12) and 73.3527(e)(8).

[2] *See* 47 CFR §§ 73.3526(e)(6) and 73.1943.

[3] 47 CFR §§ 0.61 and 0.283.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1048
Released: October 7, 2024

THE FEDERAL COMMUNICATIONS COMMISSION DEACTIVATES THE DISASTER INFORMATION REPORTING SYSTEM (DIRS) IN GEORGIA AND SOUTH CAROLINA FOR COMMUNICATIONS IMPACTED BY HURRICANE HELENE

The Federal Communications Commission (FCC), at the request of the States of Georgia and South Carolina, and in coordination with the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, announces the deactivation of the Disaster Information Reporting System (DIRS) for the following counties in Georgia and South Carolina impacted by Hurricane Helene:[1]

Georgia: Appling, Bacon, Berrien, Burke, Candler, Charlton, Clinch, Coffee, Columbia, Echols, Emanuel, Glascock, Grady, Jeff Davis, Jefferson, Lanier, Lincoln, Lowndes, McDuffie, Montgomery, Richmond, Screven, Taliaferro, Tattnall, Telfair, Toombs, Treutlen, Warren, Wayne, and Wheeler.

South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

Communications providers do not need to provide any additional reporting in DIRS for these areas in Georgia and South Carolina with respect to Hurricane Helene. 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. 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 areas in Georgia and South Carolina no longer covered by DIRS reporting for Hurricane Helene.[2]

DIRS remains activated in the following counties:

North Carolina: Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

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[1] *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 Hurricane Helene in Florida, Georgia, North Carolina and South Carolina,* Public Notice, DA 24-991 (rel. Sept. 25, 2024) ("*DIRS and MDRI Activation PN*").

[2] 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 communications, wireless, wireline, and interconnected VoIP providers required to report in DIRS pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS).

Tennessee: Carter, Cocke, Greene, Jefferson, Johnson, Unicoi, and Washington.

Please continue to provide information for the impacted counties that are already in the disaster area. ***DIRS deactivation does not release wireless providers from their responsibility to comply with MDRI requirements as noted in previous Hurricane Helene-related Public Notices***.[3] The FCC continues to monitor this event and may amend the DIRS and/or 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
Juan Chapa (202) 418-0431, juan.chapa@fcc.gov
John Healy (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 Helene, please go to www.fcc.gov/Helene.

- FCC -

[3] *See DIRS and MDRI Activation PN; see also The Federal Communications Commission Announces the Expansion of the Disaster Information Reporting System and the Mandatory Disaster Response Initiative for Communications Impacted by Hurricane Helene,* Public Notice, DA 24-1015 (rel. Sept. 27, 2024).

PUBLIC NOTICE

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

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

DA 24-1049
Released: October 7, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES OFFICE OF MANAGEMENT AND BUDGET APPROVAL FOR 911 INFORMATION COLLECTION REQUIREMENTS ASSOCIATED WITH SUPPLEMENTAL COVERAGE FROM SPACE

PSHSB opens new docket for filing 911-related SCS reports and certifications

GN Docket No. 23-65; IB Docket No. 22-271; PS Docket No. 24-318

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces that the U.S. Office of Management and Budget (OMB) has approved the 911-related information collection requirements adopted by the Federal Communications Commission (Commission) in the March 2024 Report and Order and Further Notice of Proposed Rulemaking on Single Network Future: Supplemental Coverage from Space (SCS) and Space Innovation (*Report and Order*).[1] The Report and Order adopted interim 911 text and call routing requirements for terrestrial Commercial Mobile Radio Service (CMRS) providers that use SCS arrangements to extend their coverage service areas. The Commission adopted these interim 911 text and call routing requirements at Section 9.10(t) of the rules.[2] These rules became effective on May 30, 2024, except for paragraphs (t)(3) through (5) of Section 9.10 of the rules, which include new information collection requirements under the Paperwork Reduction Act (PRA) and were delayed indefinitely pending OMB review.[3] On September 27, 2024, OMB approved the information collection requirements contained in the interim 911 rules for SCS, and on October 7, 2024, the Office of the Federal Register published a notice announcing OMB approval.[4] Accordingly, paragraphs (t)(3) through (5) of Section 9.10 of the rules are now in effect.[5]

In this Public Notice, the Bureau also provides guidance on compliance with the following information collection requirements, including opening a new docket for filing 911-related reports and certifications:

Maintaining Records

Under Section 9.10(t)(3) of the Commission's rules,[6] each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must maintain

[1] *See Single Network Future: Supplemental Coverage from Space; Space Innovation*, GN Docket No. 23-65, IB Docket No. 22-271, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-28 (Mar. 14, 2024) (*Report and Order*).

[2] 47 CFR § 9.10(t).

[3] *See* 89 Fed. Reg. 34148 (April 30, 2024).

[4] *See* 89 Fed. Reg. 81013 (October 7, 2024).

[5] *Id*.

[6] 47 CFR § 9.10(t)(3).

records of all SCS 911 voice calls and SCS 911 text messages received on its network and received at its emergency call center.

Annual Reports

By October 15 of each year, these providers also must submit a report to the Commission regarding SCS 911 voice calls and 911 text messages, and their emergency call center data, **current as of September 30 of that year**.[7] CMRS providers must submit these reports in the Commission's Electronic Comment Filing System (ECFS) in **PS Docket No. 24-318**.

These reports must include, at a minimum:

- The name and address of the CMRS provider;
- The address (zip code only) of the CMRS provider's emergency call center and the contact information (telephone number and/or email address) of the emergency call center. To avoid publicly disclosing potentially sensitive information, CMRS providers should refrain from providing specific locations such as street addresses or building names;
- The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the network of the CMRS provider that provides SCS service to its end-user subscribers during each month during the relevant reporting period;
- The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period;
- The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period that required forwarding to a PSAP and how many did not require forwarding to a PSAP;
- The aggregate number of SCS 911 voice calls that were routed using location information that met the timeliness and accuracy thresholds defined in Section 9.10(s)(3)(i)(A) and (B) of the Commission's rules;[8]
- The aggregate number of SCS 911 voice calls and SCS 911 text messages that were routed using location information that did not meet the timeliness and accuracy thresholds defined in Section 9.10(s)(3)(i)(A) and (B) of the rules;[9] and
- An explanation of how the SCS deployment, including network architecture, systems, and procedures, will support routing SCS 911 voice calls and SCS 911 text messages to the geographically appropriate PSAP with sufficient location information in compliance with Section 9.10(t)(2) of the rules.[10]

There is no required form for the submission of annual reports.

CMRS providers may submit their completed reports with a cover letter which includes the date of submission; name of CMRS provider; and name and contact information of person submitting the report. CMRS providers must file completed reports via ECFS in **PS Docket No. 24-318**.

[7] 47 CFR § 9.10(t)(3).

[8] 47 CFR § 9.10(s)(3)(i)(A), (B).

[9] 47 CFR § 9.10(s)(3)(i)(A), (B).

[10] 47 CFR § 9.10(t)(2).

One-time Privacy Certification

Under Section 9.10(t)(4) of the rules,[11] CMRS providers that use SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must certify on a one-time basis that neither they nor any third party they rely on to obtain location information or associated data used for compliance with Section 9.10(t)(2)(i) or (ii) of the rules will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise permitted or required by law. The certification also must state that the CMRS provider and any third parties it relies on to obtain location information or associated data used for compliance with Section 9.10(t)(2)(i) or (ii) of the Commission's rules, Section 9.10(t)(2)(i) or (ii), have implemented measures sufficient to safeguard the privacy and security of such location information or associated data.

CMRS providers must submit this one-time certification via ECFS in **PS Docket No. 24-318** on the **due date of the first annual report** made under Section 9.10(t)(3) of the rules.[12]

Subscriber Disclosures

Under Section 9.10(t)(5) of the rules,[13] each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers shall specifically advise every subscriber, both new and existing, in writing prominently and in plain language, of the circumstances under which 911 service for all SCS 911 calls or SCS 911 text messages may not be available via SCS or may be in some way limited by comparison to traditional enhanced 911 service. Such circumstances may include, but are not limited to, potential delay in connecting the call or text to 911, potential inability of the service to determine the end-user's location and call-back number, the consequences of moving into or out of SCS/terrestrial coverage during a live call, and potential inability of the end-user's device to obtain a line of sight to the satellite.[14]

People with Disabilities

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

Privacy Act Statement

Authority. The Commission is authorized to pursue this collection pursuant to the authority contained in 47 U.S.C. §§ 151, 152(a), 154(i), 251(e)(3), 301, 303, 332.

Purpose. To improve transparency for the 911 community and accountability for Commercial Mobile Radio Service (CMRS) providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers, the Commission adopted reporting, certification, and notification requirements for CMRS providers that constitute an information collection. CMRS providers are directed to submit these filings to ECFS consistent with the instructions in this Public Notice. In addition to collecting the information required by the Commission's interim 911 text and call routing requirements, ECFS collects from each filer the filer's name(s), address, email address (optional), IP

[11] 47 CFR § 9.10(t)(4).

[12] To illustrate, if a CMRS provider files its first annual report on Oct. 15, 2026, the one-time certification would be due on that date.

[13] 47 CFR § 9.10(t)(5).

[14] *See Report and Order* at para. 187.

address and operating system, and any information contained in the filings and attachments.[15] The Commission uses this information to inform its decision-making, implementation, and enforcement activities.

Routine Uses. The FCC may release information provided via the filings when necessary and appropriate under 5 U.S.C. § 552a(b) of the Privacy Act to: the public under FCC regulations requiring public disclosure of the information contained in our records;[16] to third parties, including individuals and businesses in the communications industry and public safety, FCC vendors and their contractors, and to other federal agencies or state, local, U.S. territorial, and Tribal government entities to administer, support, participate in, or receive information related to, FCC programs and activities, or to ensure compliance with the confidentiality and other rules regarding information sharing in the FCC's programs and activities; to federal, state, local, Tribal, international, or multinational law enforcement when FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, or order; and to non-federal personnel, including contractors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

A complete list of the routine uses can be found in the system of records notices associated with this collection, FCC/OS-1, Electronic Comment Filing System (ECFS) and FCC-2, Business Contacts and Certifications, posted at https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information.

Disclosure. Submission of reporting and certification information is mandatory for CMRS providers pursuant to Section 9.10(t) of the Commission's rules. Failure to comply with these rules may result in enforcement action by the Commission.

Contact Information

For further information, please contact Rachel Wehr, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-1138 or rachel.wehr@fcc.gov.

-FCC-

[15] FCC, *Privacy Act Statement*, https://www.fcc.gov/ecfs/privacy-statement/ECFS_PAS.pdf (last visited August 14, 2024) (*ECFS Privacy Act Statement*); *see also* Federal Communications Commission, *Privacy Act; System of Records*, 88 Fed. Reg. 87774 (Dec. 19, 2023).

[16] FCC, *ECFS Privacy Act Statement*.

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 24-1050
Released: October 7, 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 HURRICANE MILTON 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 Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, has announced that the Disaster Information Reporting System (DIRS) will be activated on Wednesday, October 9, 2024, in preparation for communications impacts by Hurricane Milton. 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: **Hurricane Milton**. Communications providers are advised that for providers that participate in DIRS, PSHSB hereby waives the separate Network Outage Reporting System (NORS) obligations for the duration of the DIRS activation with respect to outages in the geographic areas where DIRS has been activated. Providers that participate in DIRS remain required, where applicable, to report incidents in NORS that have reportable effects that fall outside the DIRS activation areas. **Reports are requested at 9:00 a.m. (EDT) on October 10, 2024 and every day after that by 9:00 a.m. (EDT) until DIRS is deactivated.**

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

JURISDICTIONS OF INTEREST FOR THIS DIRS ACTIVATION INCLUDE THE FOLLOWING:

Florida: Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, and Volusia.

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:

Florida: Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, and Volusia.

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 Hurricane Milton 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 Hurricane Milton, please go to https://www.fcc.gov/Milton.

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:

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[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 to 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).

Michael Caiafa (202) 418-1311, michael.caiafa@fcc.gov
Juan Chapa (202) 418-0431, juan.chapa@fcc.gov
John Healy (215) 847-8094, john.healy@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-24-1051
Released: October 7, 2024

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

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 Hurricane Milton. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.[1] Specifically, requests must include the following certification: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862." Presentations that directly relate to the emergency posed by Hurricane Milton are exempt from the restrictions of the Commission's *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.[2]

- **Media Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Milton and filed pursuant to section 73.1635 of the Commission's rules[3] may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & 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 Hurricane Milton request and the date the initial request was granted.
  - **Office of International Affairs Contact During Business Hours:**
    - **Submarine Cables and International 214s**:
      - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
      - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
      - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
    - **International High Frequency Broadcast Station**:
      - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
      - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
  - **Office of International Affairs Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Public Safety and Homeland Security Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Milton and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours,

[4] 47 CFR §§ 73.1250, 73.1680, 73.3542.

licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
  - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
    - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
    - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Space Bureau Guidance**
  - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at 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**:
      - Kathyrn Medley, 202-418-1211, Kathyrn.Medley@fcc.gov
      - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
      - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
  - **Space Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Competition Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Hurricane Milton 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 Hurricane Milton 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-24-1052
Released: October 7, 2024

THE FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO HURRICANE MILTON

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

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-24-1053
Released: October 7, 2024

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

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 Hurricane Milton.

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-24-1054
Released: October 7, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS IMPACTED BY HURRICANE MILTON

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

Hurricane Milton 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.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	File Nos. [Provided in Appendix A]
	)	FRN Nos. [Provided in Appendix A]
Four Non-Compliant Participating Providers in the Affordable Connectivity Program	)	NAL/Acct. Nos. [Provided in Appendix A]

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 19, 2024 **Released: September 11, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting and issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability (NAL), the Federal Communications Commission (FCC or Commission) identifies four broadband internet access service providers that failed to submit certified complete Affordable Connectivity Program (ACP) plan and subscribership data in apparent violation of the Commission's ACP Transparency Data Collection (TDC) rules. The Commission proposes a cumulative forfeiture of $470,605.62 apportioned among the providers.

II. BACKGROUND

A. Legal Background

2. On November 15, 2021, the president signed the Infrastructure Investment and Jobs Act (Infrastructure Act) to modify and extend the Emergency Broadband Benefit Program (EBB Program) to a longer-term broadband affordability program under the ACP, for which Congress appropriated $14.2 billion.[1] The Infrastructure Act mandated, among other things, that the Commission issue broadband transparency rules regarding the annual collection of information about the price and subscription rates of internet service offerings received by households enrolled in the ACP.[2] The Infrastructure Act further required the Commission to verify the accuracy of the data submitted and to make data from this annual

[1] *Affordable Connectivity Program*, WC Docket No. 21-450, Notice of Proposed Rulemaking, 37 FCC Rcd 7216, 7216-17, para. 1 (2022) (*ACP Data Collection NPRM 2022*); *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13773, 13774, para. 3 (2022) (*ACP Fourth Report and Order*). *See also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf (Infrastructure Act). The Infrastructure Act amended the 2021 Consolidated Appropriations Act to modify the and extend the EBB Program to the ACP. *See Infrastructure Act*, Pub. L. No. 117-58, 135 Stat. 1238, div. F, tit. V, § 60501, *et seq.*; Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, div. N, tit. IX, § 904, *et seq*. (2021) (*2021 Consolidated Appropriations Act*). The Commission announced the wind-down of the ACP due to a lack of additional funding from Congress. *Affordable Connectivity Program*, WC Docket No. 21-450, Order, DA 24-23 (WCB Jan. 11, 2024). Effective June 1, 2024, the ACP is no longer offering the benefit to eligible households. *See* Fed. Commc'ns Comm'n, *Affordable Connectivity Program,* fcc.gov/acp (last visited July 10, 2024).

[2] *ACP Data Collection NPRM 2022*, at 7217, para. 1; Infrastructure Act, div. F, tit. V, § 60502(c)(1).

collection publicly available in a commonly used electronic format that protects personally identifiable information and proprietary information.[3]

3. On November 15, 2022, the Commission adopted the final rules for the ACP TDC pursuant to the requirements of the Infrastructure Act.[4] Under the Commission's ACP TDC rules, providers participating in the ACP (collectively, participating providers or providers) were required, by November 30, 2023, to submit and certify plan and subscribership data based on ACP subscribers enrolled as of August 1, 2023.[5] In establishing the ACP TDC in the Infrastructure Act, Congress directed the Commission to collect detailed data about the services to which ACP households chose to apply the affordable connectivity benefit.[6] Participating providers that failed to submit data in a timely manner deprived the Commission and the public of information used to determine the value provided by the ACP and to evaluate progress towards the program goal of reducing the digital divide.[7]

4. At the Commission's direction, the Wireline Competition Bureau (WCB), the Office of Economics and Analytics (OEA), and the Universal Service Administrative Company (USAC) developed educational and training materials to assist providers with the ACP TDC rules and processes.[8] WCB, OEA, and USAC also developed an online portal for participating providers to submit their data, which was available at: https://getinternet.gov/acptdc.[9]

5. *Data Submission Deadline and Certification*. On August 11, 2023, WCB set the data collection deadline as November 9, 2023.[10] On November 9, 2023, WCB extended the data collection deadline to November 30, 2023, to allow additional time for ACP providers to submit their data, accounting for two intervening federal holidays (Veterans Day and Thanksgiving), and accounting for technical issues that affected certain filers.[11] The data submitted was to be based on a reference or

[3] *ACP Data Collection NPRM 2022*, at 7217-18, para. 3; Infrastructure Act, div. F, tit. V, § 60502(c)(2), (4).

[4] *See generally ACP Fourth Report and Order*; see also 47 CFR § 54.1813.

[5] *See* 47 CFR § 54.1813(c); *Affordable Connectivity Program Transparency Data Collection Deadline Extended to Nov. 30, 2023*, WC Docket No. 21-450, Public Notice, DA 23-1066, 2023 WL 8602194 (WCB 2023) (*ACP TDC 2023 Deadline Extension*).

[6] *See ACP Fourth Report and Order, supra* note 1, at 13774, 13799, paras. 2, 54.

[7] *Id.* at 13774, para. 2.

[8] *Id.* at 13816, para. 93.

[9] Fed. Commc'ns Comm'n, ACP Transparency Data Collection System, https://getinternet.gov/acptdc (last visited July 12, 2024). *See also Wireline Competition Bureau Provides Data Fields to Be Collected Under the Affordable Connectivity Program Transparency Data Collection*, WC Docket No. 21-450, Public Notice, 38 FCC Rcd 2257 (WCB 2023); Universal Service Administrative Co., ACP Transparency Data Collection System: User Guide, https://www.usac.org/wp-content/uploads/about/documents/acp/TDC-User-Guide.pdf (last visited July 12, 2024).

[10] *See Wireline Competition Bureau Announces Completion of OMB Rev. & Key Dates for Affordable Connectivity Program Transparency Data Collection*, WC Docket No. 21-450, Public Notice, DA 23-683, 2023 WL 5197286, at *1 (WCB 2023) (setting the collection deadline as November 9, 2023, with a reference or snapshot date of August 1, 2023) (*Initial Notice of ACP TDC Deadline*); 47 CFR § 54.1813(c). Participating providers were also required to submit the required information annually after the initial collection. 47 CFR § 54.1813(c). For the inaugural data collection, the Commission directed WCB to set the initial submission deadline and establish a reference or "snap-shot" date for the data to be submitted by participating providers. *ACP Fourth Report and Order, supra* note 1, at 13802, para. 59. All participating providers were required to submit and certify complete information by the date set by WCB. *Id.*; *see also* 47 CFR § 54.1813(b)-(d).

[11] *ACP TDC 2023 Deadline Extension*, *supra* note 5.

snapshot date of August 1, 2023.[12] All data submitted by participating providers were required to be certified by an officer of the provider.[13]

6. *Required Data*. The Commission established an aggregate data collection that was "designed to capture information about ACP-supported services[.]"[14] Under this data collection methodology, participating providers were to submit information about the number of subscribers for each unique plan by ZIP code.[15] For each ACP plan to which a household was enrolled, a participating provider was required to provide at the ZIP code level: (i) a unique identifier with certain plan characteristics; (ii) the number of ACP households subscribed; (iii) the number of ACP households that had reached a data cap in the month prior to the snapshot date; (iv) the average amount by which ACP households had exceeded the data cap for the month prior to the snapshot date; (v) the average dollar amount paid by ACP households that had exceeded the data cap; and (vi) the number of households receiving the ACP Tribal enhanced benefit, the ACP high-cost enhanced benefit, and the Lifeline benefit.[16] Participating providers were also required to provide the aforementioned metrics for legacy plans with exceptions for certain plan characteristics such as speed (actual and advertised), latency, introductory monthly charge, the length of the introductory period, and any one-time fees.[17]

7. *Wind-down and Expiration of the ACP*. The last fully funded month of the ACP was April 2024.[18] The Commission directed its staff to account for the ACP TDC in wind-down procedures in light of the expiration of the ACP.[19] The Commission, however, retained authority to enforce the ACP rules despite the ACP's expiration.[20]

8. The Commission notified participating providers that the Commission remained "committed to ensuring the integrity of the ACP and addressing potential non-compliance using the full range of the Commission's authority and available tools, including audit and investigatory procedures and in cooperation with the FCC Office of Inspector General and law enforcement agencies."[21] Participating providers were "reminded of their obligation to comply with USAC and Commission requests," as well as the document retention requirements, which extended after the end of the ACP.[22] Providers were further

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[12] *ACP TDC 2023 Deadline Extension*, *supra* note 5, at *1; *Initial Notice of ACP TDC Deadline*, *supra* note 10, at *1.

[13] *See* 47 CFR § 54.1813(d) (stating that an officer of the participating provider must certify, under penalty of perjury, that: "(1) The officer is authorized to submit the data collection on behalf of the participating provider; and (2) The data and information provided in the data collection is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted.").

[14] *ACP Fourth Report and Order, supra* note 1, at 13776, para. 8.

[15] *Id.* at 13780, para. 16.

[16] 47 CFR § 54.1813(b)(1); *see also ACP Fourth Report and Order, supra* note 1, at 13780-13798, paras. 17-52 (describing the information that participating providers are required to provide and the rationale thereto).

[17] 47 CFR § 54.1813(b)(2).

[18] *Wireline Competition Bureau Announces the Final Month of the Affordable Connectivity Program*, WC Docket No. 21-450, DA 24-195, 2024 WL 981912, at *14 (WCB Mar. 4, 2024).

[19] *ACP Fourth Report and Order, supra* note 1, at 13805, para. 66.

[20] *Affordable Connectivity Program*, WC Docket No. 21-450, Order, DA 24-23, 2024 WL 147150, at *12, para. 34 (WCB 2024) (announcing the requirements and guidance for wind-down of the ACP) (*ACP Wind-down Order*).

[21] *Id*.

[22] *Id.* at *12, para. 34 & n.75 (citing 47 CFR § 54.1811) (explaining that providers are required to "maintain records to document compliance with all Commission requirements governing the [ACP] for the six full preceding calendar years."); *Affordable Connectivity Program, Emergency Broadband Benefit Program,* WC Docket Nos. 21-450 and

reminded of "their obligation to use robust policies and procedures for ensuring compliance with the Commission's rules[.]"[23]

B. Factual Background

9. Appendix A, below, sets forth the relevant, unique facts pertaining to each entity identified in the caption of this item and describes, with specificity, each entity's conduct in relation to the ACP TDC rules. On March 25, 2024, WCB referred the entities listed in Appendix A to the Enforcement Bureau (Bureau).[24] Additionally, Appendix B provides a detailed breakdown of the proposed forfeiture for each entity. Appendix C identifies mailing addresses for the entities.[25]

III. DISCUSSION

10. We find that the participating providers identified in Appendix A apparently willfully violated section 54.1813(c) and (d) of the Commission's rules by apparently failing to submit certified complete ACP TDC plan and subscribership data.[26] These providers' apparent failure to submit and certify complete data to the Commission ultimately impairs the integrity of the ACP and the Commission's mandate to assist the public in obtaining affordable broadband services by depriving the Commission of critical information. The data collected is imperative to assessing the efficacy of the ACP and the longer-term needs of those seeking affordable broadband services.[27] These providers' non-compliance with the Commission's ACP TDC rules left the Commission and the public with an incomplete picture of the ACP services households were receiving. The Commission takes its mandate from Congress to collect data related to the ACP seriously, and a provider's disregard for the data collection requirements jeopardizes these efforts.

A. Four Participating Providers Apparently Violated the ACP TDC Rules

11. A violation of the ACP rules, including the TDC rules, is to be treated as a violation of the Communications Act of 1934, as amended (Act), or a regulation promulgated under the Act.[28] The Commission must enforce the portion of the Infrastructure Act establishing the ACP and associated regulations "in the same manner, by the same means, and with the same jurisdiction, powers, and duties

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20-445, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 593, para. 234 (2022) (*ACP Order*) (adopting Emergency Broadband Benefit document retention requirements without modification); *EBB Program Order*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612, 4644, para. 67 (2021) ("We require that providers keep all documentation provided to them from the applicant used to make eligibility determinations, for as long as the applicant receives the Emergency Broadband Benefit, and also for no less than the six full calendar years following the termination of the EBB Program."). Providers are required to "maintain records to document compliance with all Commission requirements governing the [ACP] for the six full preceding calendar years." 47 CFR § 54.1811. Providers must provide that documentation upon request by the Commission or USAC. *See id*.

[23] *ACP Wind-down Order,* at *12, para. 34.

[24] Information on file in Investigation Numbers EB-IHD-24-00036894, EB-IHD-24-00036896, EB-IHD-24-00036898, EB-IHD-24-00036900.

[25] *See* 47 CFR §1.80(g)(2) ("The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see § 1.5)."). As a courtesy, we are sending copies of this notice by e-mail to each entity's points of contact as delineated in Appendix C.

[26] *Id.* § 54.1813(c), (d); *ACP Fourth Report and Order*, *supra* note 1; *ACP TDC 2023 Deadline Extension*, *supra* note 5.

[27] *See ACP Fourth Report and Order*, *supra* note 1, at 13774, para. 2.

[28] *ACP Order*, *supra* note 22, at 594, para. 237 & n. 672 (stating that the Infrastructure Act "left intact the declaration that a violation of section 904[,] [establishing the EBB Program,] or any regulation promulgated under that section 'shall be treated as a violation of the Communications Act of 1934 or a regulation promulgated under such Act.'") (citing the *2021 Consolidated Appropriations Act*, *supra* note 1, div. N, tit. IX, § 904(g)).

as though all applicable terms and provisions of the [Act] were incorporated or made a part of [that] section."[29] The Infrastructure Act expressly granted the Commission the authority to impose forfeiture penalties to enforce compliance.[30]

12. We find that each participating provider listed in Appendix A apparently willfully violated section 54.1813(c) and (d) of the Commission's rules and orders by failing to submit any certified ACP TDC plan and subscribership data.[31] Appendix A, below, explains in specific detail the relevant factual background pertaining to each participating provider's individual circumstances.

B. Proposed Forfeiture

13. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission 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.[32] In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received by the person against whom the notice has been issued or be sent to the last known address of the person by certified mail, and the person must have an opportunity to show, in writing, within a reasonable amount of time, why no such forfeiture penalty should be imposed.[33] The Commission will then issue a forfeiture order if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.[34] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of such act, *irrespective of any intent* to violate . . . any rule or regulation of the Commission."[35]

14. Moreover, the Commission's *Forfeiture Policy Statement*[36] specifies that the Commission shall impose a forfeiture based upon consideration of 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."[37]

15. Providers participating in the ACP may be subject to enforcement action, including forfeitures and removal from the ACP, for failing to comply with the ACP TDC rules.[38] In this case, a

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[29] *ACP Order, supra* note 22, at 594, para. 237 (quoting the *2021 Consolidated Appropriations Act*, *supra* note 1, div. N, tit. IX, § 904(g)).

[30] 47 U.S.C. § 1752(b)(9)(C)(ii).

[31] *See* 47 CFR § 54.1813(c), (d); *ACP Fourth Report and Order, supra* note 1; *ACP TDC 2023 Deadline Extension, supra* note 5.

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

[33] *See* 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

[34] *See, e.g.*, *SBC Commc'ns, Inc.,* Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

[35] 47 U.S.C. § 312(f)(1) (emphasis added). 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, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g.*, *S. Cal. Broad. Co.*, Memorandum Opinion and Order, FCC 91-204, 6 FCC Rcd 4387, 4387-88, para. 5 (1991).

[36] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997), *recons. Denied,* 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); *see also* 47 CFR § 1.80(b)(11).

[37] 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11); *Forfeiture Policy Statement*, at 17100-17101, para. 27.

[38] *ACP Fourth Report and Order, supra* note 1, at 13816-19, paras. 94-100. *See* 47 CFR § 54.1801(f)(3)(i) (all participating providers must acknowledge that they are "subject to the Commission's enforcement, fine, or forfeiture authority under the Communications Act[.]"); *id*. § 54.1813(f) (stating that failing to submit ACP TDC information by the compliance date is a violation that is subject to the Commission's enforcement authority); *see also* 47 CFR §

"violation of the [ACP transparency data] collection requirement occurs where a provider fails to submit information by the compliance date for a state in which the provider has ACP-enrolled subscribers."[39] For the Commission's initial data collection, all participating providers were required to submit the required data by November 30, 2023.[40] The Commission adopted a base forfeiture amount for each state. The base forfeiture amount for each state is the lesser of $22,000 or the latest monthly ACP reimbursement claim amount, for each state for which a provider failed to submit complete information.[41] A participating provider may further be subject to the Commission's involuntary removal process.[42]

16. A monetary forfeiture is warranted against each participating provider listed in Appendix A for apparent willful violations of section 54.1813(c) and (d) of the Commission's rules and orders because each of these participating providers apparently failed to submit and certify complete data by the deadline of November 30, 2023.[43] In considering the relevant statutory factors, the requirement under section 54.1813(c) and (d) of the Commission's rules, and the *Forfeiture Policy Statement,* we believe that a forfeiture is warranted against each provider cited in Appendix A for apparent willful violations of section 54.1813(c) and (d) of the Commission's rules and orders. Appendix A, below, explains in specific detail the proposed forfeiture amount for each provider. We believe imposing these forfeiture

54.1801(e)(2) (delineating the involuntary removal process); *ACP Fourth Report and Order, supra* note 1, at 13818, para. 100 (declining to "carve-out violations of the ACP Transparency Data collection rules from the ACP's involuntary removal process").

[39] 47 CFR § 54.1813(f). The term "state" as used herein and in Appendix A includes states, the District of Columbia, and territories. The term "state" is left undefined in the relevant part of the CFR concerning the ACP as well as the EBB Program. However, the ACP was available to eligible low-income households in the District of Columbia, and certain territories including Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana islands. *See* Universal Service Administrative Company, ACP Enrollment and Claims Tracker, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited July 10, 2024) (showing ACP enrollment and claims figures by state, territory, and the District of Columbia). Such an interpretation is consistent with general principles of statutory interpretation, the Infrastructure Act, and the Commission's rules. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 319 (2014) (stating that the natural presumption is that "identical words used in different parts of the same act are intended to have the same meaning" absent context to the contrary); *see also* Infrastructure Act, *supra* note 1, 135 Stat. 1238, div. F, tit. V, § 60501 (under Title V, concerning the ACP, leaving undefined the term "state"); Infrastructure Act, *supra* note 1, 135 Stat. 1182, div. F, tit. I, § 60102(a)(2)(M) (under Title I, concerning broadband grants, defining "state" to mean "any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, [and] the Northern Mariana islands[.]"); 47 CFR § 54.1801(b) (stating that certain broadband providers must seek approval from WCB to participate in the ACP and as part of the application must contain information on the *states or territories* in which an applicant plans to participate) (emphasis added).

[40] *See* 47 CFR § 54.1813(c); *Initial Notice of ACP TDC Deadline*, *supra* note 10; *ACP TDC 2023 Deadline Extension*, *supra* note 5.

[41] 47 CFR § 54.1813(f); *see also ACP Fourth Report and Order, supra* note 1, at 13817, para. 97. By using a provider's monthly claim amount, the Commission tied the base forfeiture to the number of a provider's ACP subscribers to account for a provider's size. *ACP Fourth Report and Order, supra* note 1, at 13817, para. 97.

[42] 47 CFR § 54.1801(e); *see also ACP Fourth Report and Order, supra* note 1, at 13818, para. 100.

[43] 47 CFR § 54.1813(c), (d); *ACP Fourth Report and Order, supra* note 1; *ACP TDC 2023 Deadline Extension, supra* note 5.

amounts will serve as a deterrent to other providers participating in the ACP, and any successor programs, that might similarly ignore their reporting obligations under the TDC rules.[44]

IV. CONCLUSION

17. We have determined that the four participating providers identified in Appendix A apparently willfully violated section 54.1813(c) and (d) of the Commission's rules and orders. Accordingly, we propose a cumulative forfeiture of $470,605.62, apportioned among these four participating providers as described in Appendix A.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, 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, that all entities identified in Appendix A are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amounts specified in Appendix A, respectively, for each of the entities' willful violations of section 54.1813(c) and (d) of the Commission's rules and orders.

19. **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, each recipient of this Notice of Apparent Liability **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for each entity to pay the proposed forfeiture, each entity shall notify Patrick M. McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@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, each entity shall send electronic notification of payment to Patrick M. McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@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:[45]

- 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

[44] Our dissenting colleague states that, after the Supreme Court's decision in *Jarkesy v. SEC*, which invalidated the SEC's imposition of a civil monetary penalty on Seventh Amendment grounds, the FCC's ability to impose monetary forfeitures is "unclear". But the statutory structure governing the FCC's forfeiture power is quite different from that of the SEC. For one thing, as we have explained, after the Commission issues a forfeiture order under section 503(b)(4) of the Communications Act following a Notice of Apparent Liability, the party on whom the forfeiture is imposed is entitled to a trial de novo in federal district court before it can be required to pay. *See* 47 U.S.C. § 504(a); *AT&T, Inc.*, Forfeiture Order, FCC 24-40, para. 69 (Apr. 29, 2024). For another, the FCC largely enforces "public rights" the adjudication of which may constitutionally be vested in an administrative agency, and which have no common law analogue. *See id.* at para. 77. The statutory right to a trial de novo provided by law before a forfeiture under section 503(b)(4) can be enforced, along with the nature of the violations the Commission typically addresses, disposes of the claim that the imposition of a monetary forfeiture by the FCC violates the Seventh Amendment.

[45] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters "FORF". In addition, a completed Form 159[46] or printed CORES form[47] 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).[48] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

21. 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.[49] 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.

22. 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.[50] 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, Patrick M. McGrath, Chief, 45 L Street, NE, Washington, DC 20554, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick M. McGrath at Patrick.McGrath@fcc.gov, Kalun

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

[47] 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.

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

[49] *See* 47 CFR § 1.1914.

[50] *Id.* §§ 1.16, 1.80(g)(3).

Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@fcc.gov.

23. 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.[51] 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.[52]

24. **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 each entity and legal counsel, if known, at the address(es) and e-mail(s) listed in Appendix C below.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[51] *See* 47 U.S.C. § 503(b)(2)(E).

[52] *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).

APPENDIX A

As described below, each participating provider listed below apparently failed to submit and certify complete information about their broadband internet access service by the deadline of November 30, 2023, as established under the Affordable Connectivity Program (ACP) Transparency Data Collection (TDC) rules and therefore, is in apparent violation of section 54.1813(c) and (d) of the Commission's rules and associated orders.[1]

1. **SprintFone Inc. (SprintFone); FRN: 0032347759; File No.: EB-IHD-24-00036894; NAL/Acct No.: 202432080022.** SprintFone d/b/a TalkDaily Inc. is a local reseller of telecommunications services and a provider of wireless data.[2] SprintFone applied to be an ACP provider on May 26, 2022, July 25, 2022, August 12, 2022, and March 22, 2023 and was approved by the Wireline Competition Bureau (WCB) on May 26, 2022, July 27, 2022, August 12, 2022, and March 22, 2023, respectively.[3] Through the ACP, SprintFone provided services to enrolled ACP households in the following states but apparently failed to provide complete and timely ACP TDC information for these states: Alabama, Colorado, District of Columbia, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Maryland, North Carolina, New York, Pennsylvania, Puerto Rico, Utah, Virginia, Washington, and West Virginia.[4] As of March 25, 2024, SprintFone did not submit and certify complete information for these states pursuant to the ACP TDC rules.[5] It submitted and certified plan information as required under section 54.1813(b)(1)(i), but apparently failed to submit and certify any other fields of required information for these states pursuant to section 54.1813(b)(1)(ii)-(viii) of the ACP TDC rules.[6]

2. SprintFone apparently did not submit complete information under the ACP TDC rules by the established deadline of November 30, 2023. The Commission finds that SprintFone apparently committed 18 violations by failing to submit the requisite data for each state in which it had ACP-enrolled subscribers. The base forfeiture for its apparent violations of section 54.1813(c) and (d) for each state for which it failed to submit and certify complete data by the established deadline amounts to $136,588.22.[7] In light of the circumstances, we propose a forfeiture of $136,588.22.

3. **IJ Wireless, Inc. (IJ Wireless); FRN: 0032944597; File No.: EB-IHD-24-00036896; NAL/Acct No.: 202432080023.** IJ Wireless is a local reseller of telecommunications services and a provider of wireless data.[8] IJ Wireless applied to be an ACP provider on October 14, 2022, November 8, 2022, January 6, 2023, February 15, 2023, April 6, 2023, May 8, 2023, and January 31, 2024, and was approved by WCB on October 14, 2022, November 14, 2022, January 6, 2023, February 15, 2023, April

[1] 47 CFR § 54.1813(c)-(d); *Affordable Connectivity Program*, Fourth Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13773 (2022); *Affordable Connectivity Program Transparency Data Collection Deadline Extended to Nov. 30, 2023*, Public Notice, 2023 WL 8602194 (WCB 2023).

[2] *See* 2022 FCC Form 499-A Telecommunications Reporting Worksheet, SprintFone Inc., Line 105; Federal Commc'n Comm'n, Registration System, SprintFone, https://apps.fcc.gov/cores/searchDetail.do?frn=0032347759&csfrToken= (last visited May 20, 2024).

[3] *See* SprintFone Application (filed May 26, 2022); SprintFone Application (filed July 25, 2022); SprintFone Application (filed Aug. 12, 2022); SprintFone Application (filed Mar. 22, 2023).

[4] Information on file in Investigation Number EB-IHD-24-00036894.

[5] *Id*.

[6] *Id*.; *see also* 47 CFR § 54.1813(b)(1).

[7] 47 CFR § 54.1813(f). A more detailed description of the proposed forfeiture calculation is in Appendix B.

[8] *See* 2023 FCC Form 499-A Telecommunications Reporting Worksheet, IJ Wireless, Inc., Line 105.

6, 2023, August 30, 2023, and February 7, 2024, respectively.[9] Through the ACP, IJ Wireless provided services to enrolled ACP households in the following states but failed to provide complete and timely ACP TDC information for these states: Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, and Texas.[10] As of March 25, 2024, IJ Wireless did not submit and certify complete information for these states pursuant to the ACP TDC rules.[11] It submitted and certified plan information as required under section 54.1813(b)(1)(i), but apparently failed to submit and certify any other required fields of information for these states pursuant to section 54.1813(b)(1)(ii)-(viii) of the ACP TDC rules.[12]

4. IJ Wireless apparently did not submit complete information under the ACP TDC rules by the established deadline of November 30, 2023. The Commission finds that IJ Wireless apparently committed 28 violations by failing to submit the requisite data for each state in which it had ACP-enrolled subscribers. The base forfeiture for its apparent violations of section 54.1813(c) and (d) for each state for which it failed to submit and certify complete data by the established deadline amounts to $109,747.40.[13] In light of the circumstances, we propose a forfeiture of $109,747.40.

5. **Culture Wireless LLC (Culture); FRN: 0031329923; File No.: EB-IHD-24-00036898; NAL/Acct No.: 202432080024.** Culture is a Competitive Access Provider/Competitive Local Exchange Carrier and provider of wireless and cellular data.[14] Culture applied to be an ACP provider on February 6, 2022, June 14, 2023, and September 7, 2023 and was approved by WCB on February 7, 2022, September 5, 2023, and December 11, 2023, respectively.[15] Through the ACP, Culture provided services to enrolled households in the following states but failed to provide complete and timely ACP TDC information for these states: Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and West Virgina.[16] As of March 25, 2024, Culture Wireless did not submit and certify complete information for these states pursuant to the ACP TDC rules.[17] It submitted and certified plan information as required under section 54.1813(b)(1)(i), but apparently failed to submit and certify any other required fields of information for these states pursuant to section 54.1813(b)(1)(ii)-(viii) of the ACP TDC rules.[18]

6. Culture apparently did not submit complete information under the ACP TDC rules by the established deadline of November 30, 2023. The Commission finds that Culture apparently committed 48

[9] *See* IJ Wireless Application (filed Oct. 14, 2022); IJ Wireless Application (filed Nov. 8, 2022); IJ Wireless Application (filed Jan. 6, 2023); IJ Wireless Application (filed Feb. 15, 2023); IJ Wireless Application (filed Apr. 6, 2023); IJ Wireless Application (filed May 8, 2023); IJ Wireless Application (filed Jan. 31, 2024).

[10] Information on file in Investigation Number EB-IHD-24-00036896.

[11] *Id*.

[12] *Id*.; *see also* 47 CFR § 54.1813(b)(a).

[13] 47 CFR § 54.1813(f). A more detailed description of the proposed forfeiture calculation is in Appendix B.

[14] *See* 2023 FCC Form 499-A Telecommunications Reporting Worksheet, Culture Wireless, Line 105.

[15] *See* Culture Wireless Application (filed Feb. 6, 2022); Culture Wireless Application (filed June 14, 2023); Culture Wireless Application (filed Sept. 7, 2023).

[16] Information on file in Investigation Number EB-IHD-24-00036898.

[17] *Id*.

[18] *Id*.; *see also* 47 CFR § 54.1813(b)(1).

violations by failing to submit the requisite data for each state in which it had ACP-enrolled subscribers. The base forfeiture for its apparent violations of section 54.1813(c) and (d) for each state for which it failed to submit and certify complete data by the established deadline amounts to $150,710.[19] In light of the circumstances, we propose a forfeiture of $150,710.

7. **Cathect Communications, Inc. (Cathect); FRN: 0030065312; File No.: EB-IHD-24-00036900; NAL/Acct No.: 202432080025.** Cathect was incorporated on June 27, 2019 in Texas.[20] Cathect provides phone and Internet services[21] and is listed as a Competitive Access Provider/Competitive Local Exchange Carrier (CAP/CLEC) with USAC.[22] Cathect applied to be an EBB Program provider on May 21, 2021 and was approved by WCB on May 21, 2021, and Cathect also applied to be an ACP provider on January 13, 2023, January 19, 2023, January 19, 2023, January 19, 2023, November 6, 2023, November 6, 2023, November 28, 2023, January 2, 2024, and January 9, 2024 and was approved by WCB on January 13, 2023, January 20, 2023, January 20, 2023, January 20, 2023, November 6, 2023, November 6, 2023, November 30, 2023, January 4, 2024, and January 9, 2024, respectively.[23] Through the ACP, Cathect provided services to enrolled households in the following states but failed to provide complete and timely ACP TDC information for these states: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Mississippi, North Carolina, Nevada, Ohio, South Carolina, Tennessee, Texas, and Wisconsin.[24] As of March 25, 2024, Cathect apparently did not submit and certify any of the requisite information for these locations pursuant to the ACP TDC rules.[25]

8. Cathect apparently did not submit complete information under the ACP TDC rules by the established deadline of November 30, 2023. The Commission finds that Cathect apparently committed 20 violations by failing to submit the requisite data for each state in which it had ACP-enrolled subscribers. The base forfeiture for its apparent violations of section 54.1813(c) and (d) for each state for which it failed to submit and certify complete data by the established deadline amounts to $73,560.[26] In light of the circumstances, we propose a forfeiture of $73,560.

[19] 47 CFR § 54.1813(f). A more detailed description of the proposed forfeiture calculation is in Appendix B.

[20] *City Commc'ns, Inc.,* Notice of Apparent Liability for Forfeiture, FCC 24-13, 2024 WL 688538, at *10-11, para. 29 (2024).

[21] *See* Cathect Communications Inc., https://cathectc.com/wireless-phone-internet/ (last visited May 20, 2024).

[22] *See* 2023 FCC Form 499-A Telecommunications Reporting Worksheet, Cathect Communications Inc., Line 105.

[23] *See* Cathect Communications Application (filed May 21, 2021); Cathect Communications Application (filed Jan. 13, 2023); Cathect Communications Application (filed Jan. 19, 2023, Cathect Communications Application (filed Jan. 19, 2023); Cathect Communications Application (filed Jan. 19, 2023); Cathect Communications Application (filed Nov. 6, 2023); Cathect Communications Application (filed Nov. 6, 2023); Cathect Communications Application (filed Nov. 28, 2023); Cathect Communications Application (filed Jan. 2, 2024); Cathect Communications Application (filed Jan. 9, 2024).

[24] Information on file in Investigation Number EB-IHD-24-00036900.

[25] *Id.*; *see also* 47 CFR § 54.1813(b).

[26] 47 CFR § 54.1813(f). A more detailed description of the proposed forfeiture calculation is in Appendix B.

APPENDIX B

The following provides a detailed calculation of the proposed forfeiture for each of the four non-compliant participating providers pursuant to section 54.1813(f).[1]

SprintFone, Inc.

State	Total Reimbursement Claim by State (July 2023)	Proposed Forfeiture by State (lesser of $22,000 or the July 2023 monthly claim)
AL	{[ ]}	{[ ]}
CO	{[ ]}	{[ ]}
DC	{[ ]}	{[ ]}
FL	{[ ]}	{[ ]}
GA	{[ ]}	{[ ]}
IL	{[ ]}	{[ ]}
KY	{[ ]}	{[ ]}
LA	{[ ]}	{[ ]}
MA	{[ ]}	{[ ]}
MD	{[ ]}	{[ ]}
NC	{[ ]}	{[ ]}
NY	{[ ]}	{[ ]}
PA	{[ ]}	{[ ]}
PR	{[ ]}	{[ ]}
UT	{[ ]}	{[ ]}
VA	{[ ]}	{[ ]}
WA	{[ ]}	{[ ]}
WV	{[ ]}	{[ ]}
Total	**$137,004.26**	**$136,588.22**

[1] 47 CFR § 54.1813(f). Material set off by braces and brackets {[ ]} is confidential business information and is redacted from the public version of this document.

IJ Wireless, Inc.

State	Total Reimbursement Claim by State (July 2023)	Proposed Forfeiture by State (lesser of $22,000 or the July 2023 monthly claim)
AK	{[ ]}	{[ ]}
AL	{[ ]}	{[ ]}
AR	{[ ]}	{[ ]}
AZ	{[ ]}	{[ ]}
CA	{[ ]}	{[ ]}
CO	{[ ]}	{[ ]}
CT	{[ ]}	{[ ]}
DE	{[ ]}	{[ ]}
FL	{[ ]}	{[ ]}
HI	{[ ]}	{[ ]}
IA	{[ ]}	{[ ]}
IL	{[ ]}	{[ ]}
KY	{[ ]}	{[ ]}
LA	{[ ]}	{[ ]}
MD	{[ ]}	{[ ]}
MI	{[ ]}	{[ ]}
MN	{[ ]}	{[ ]}
MS	{[ ]}	{[ ]}
MT	{[ ]}	{[ ]}
NC	{[ ]}	{[ ]}
ND	{[ ]}	{[ ]}
NM	{[ ]}	{[ ]}
OH	{[ ]}	{[ ]}
OK	{[ ]}	{[ ]}
OR	{[ ]}	{[ ]}
SC	{[ ]}	{[ ]}
TN	{[ ]}	{[ ]}
TX	{[ ]}	{[ ]}
Total	**$109,747.40**	**$109,747.40**

Culture Wireless LLC

State	Total Reimbursement Claim by State (July 2023)	Proposed Forfeiture by State (lesser of $22,000 or the July 2023 monthly claim)
AK	{[ ]}	{[ ]}
AL	{[ ]}	{[ ]}
AR	{[ ]}	{[ ]}
AZ	{[ ]}	{[ ]}
CA	{[ ]}	{[ ]}
CO	{[ ]}	{[ ]}
CT	{[ ]}	{[ ]}
DC	{[ ]}	{[ ]}
DE	{[ ]}	{[ ]}
FL	{[ ]}	{[ ]}
GA	{[ ]}	{[ ]}
HI	{[ ]}	{[ ]}
IA	{[ ]}	{[ ]}
ID	{[ ]}	{[ ]}
IL	{[ ]}	{[ ]}
IN	{[ ]}	{[ ]}
KS	{[ ]}	{[ ]}
KY	{[ ]}	{[ ]}
LA	{[ ]}	{[ ]}
MA	{[ ]}	{[ ]}
MD	{[ ]}	{[ ]}
MI	{[ ]}	{[ ]}
MN	{[ ]}	{[ ]}
MO	{[ ]}	{[ ]}
MS	{[ ]}	{[ ]}
MT	{[ ]}	{[ ]}
NC	{[ ]}	{[ ]}
ND	{[ ]}	{[ ]}
NE	{[ ]}	{[ ]}
NH	{[ ]}	{[ ]}
NJ	{[ ]}	{[ ]}
NM	{[ ]}	{[ ]}
NV	{[ ]}	{[ ]}
NY	{[ ]}	{[ ]}
OH	{[ ]}	{[ ]}
OK	{[ ]}	{[ ]}
OR	{[ ]}	{[ ]}
PA	{[ ]}	{[ ]}
RI	{[ ]}	{[ ]}
SC	{[ ]}	{[ ]}
SD	{[ ]}	{[ ]}

TN	{[ ]}	{[ ]}
TX	{[ ]}	{[ ]}
UT	{[ ]}	{[ ]}
VA	{[ ]}	{[ ]}
WA	{[ ]}	{[ ]}
WI	{[ ]}	{[ ]}
WV	{[ ]}	{[ ]}
Total	**$171,040.00**	**$150,710.00**

Cathect Communications, Inc.

State	Total Reimbursement Claim by State (July 2023)	Proposed Forfeiture by State (lesser of $22,000 or the July 2023 monthly claim)
AL	{[ ]}	{[ ]}
AR	{[ ]}	{[ ]}
CA	{[ ]}	{[ ]}
FL	{[ ]}	{[ ]}
GA	{[ ]}	{[ ]}
IL	{[ ]}	{[ ]}
IN	{[ ]}	{[ ]}
KS	{[ ]}	{[ ]}
KY	{[ ]}	{[ ]}
LA	{[ ]}	{[ ]}
MI	{[ ]}	{[ ]}
MO	{[ ]}	{[ ]}
MS	{[ ]}	{[ ]}
NC	{[ ]}	{[ ]}
NV	{[ ]}	{[ ]}
OH	{[ ]}	{[ ]}
SC	{[ ]}	{[ ]}
TN	{[ ]}	{[ ]}
TX	{[ ]}	{[ ]}
WI	{[ ]}	{[$]}
Total	**$73,560.00**	**$73,560.00**

APPENDIX C

Entity	Address(es)	E-mail(s)
SprintFone Inc.	Itra Junaid, CEO, SprintFone, Inc. (TalkDaily, Inc.), 1225 Franklin Ave, Ste. 325, Garden City, NY 11530; 99 Washington Ave, Ste. 805-A, Albany, NY 12210; and c/o Incorp Services, Inc., 1100 H Street NW, Ste. 840, Washington, DC 20005.	itra@sprintfone.com; it@talkdailyinc.com; itrasheikh@hotmail.com; itra.junaid@sprintfone.com; and process@incorp.com.
IJ Wireless, Inc.	Elizabeth Murray, Manager, IJ Wireless, Inc., 17W775 Butterfield Rd, Ste. 123, Oakbrook Terrace, IL 60181; 24506 Champion Drive, Plainfield, IL 60585; and c/o Incorp Services, Inc. at 1100 H Street NW, Ste. 840, Washington, DC 20005.	elizabeth@ijwireless.us
Culture Wireless LLC	Vernell Woods; Louis A. White III, Director, Culture Wireless LLC, 2212 Eagles Nest Cir., Decatur, GA 30035; 2302 Parklake Drive NE, Atlanta, GA 30345; and c/o Incorp at 1100 H Street NW, Ste. 840, Washington, DC 20005.	louis@usconnect.llc; admin@culturewireless.com; vernell@moolahwireless.com; vernell@culturewireless.com; and service@incorp.com.
Cathect Communications, Inc.	Ishrat Jahan, CEO, and Suzane Anderson, Consultant, Cathect Communications, Inc., 2160 Lexington Lane, Cummings, GA 30040; PO Box 848, Smyrna, GA 30081; and c/o Incorp Services Inc. at 1100 H Street NW, Ste. 840, Washington, DC 20005.	sabaz@cathectc.com; suzane@cathectc.com; ishrat@cathectc.com; info@cathectc.com; and info@incorp.com.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Four Non-Compliant Participating Providers in the Affordable Connectivity Program,* FRN: 0032347759; File No.: EB-IHD-24-00036894; NAL/Acct No.: 202432080022; FRN: 0032944597; File No.: EB-IHD-24-00036896; NAL/Acct No.: 202432080023; FRN: 0031329923; File No.: EB-IHD-24-00036898; NAL/Acct No.: 202432080024; FRN: 0030065312; File No.: EB-IHD-24-00036900; NAL/Acct No.: 202432080025

The Bipartisan Infrastructure Law requires every provider to annually submit data regarding "the price and subscription rates of each internet service offering" made available under the Affordable Connectivity Program. There are no exceptions. Failure to follow the law must have consequences and that is why we take this action today.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING

Re: *Four Non-Compliant Participating Providers in the Affordable Connectivity Program*, FRN: 0032347759; File No.: EB-IHD-24-00036894; NAL/Acct No.: 202432080022; FRN: 0032944597; File No.: EB-IHD-24-00036896; NAL/Acct No.: 202432080023; FRN: 0031329923; File No.: EB-IHD-24-00036898; NAL/Acct No.: 202432080024; FRN: 0030065312; File No.: EB-IHD-24-00036900; NAL/Acct No.: 202432080025.

Under new and controlling Supreme Court precedent, the Commission's authority to assess monetary forfeitures as it traditionally has done is unclear. Until the Commission formally determines the bounds of its enforcement authority under this new precedent, I am obligated to dissent from any decision purporting to impose a monetary forfeiture. I call on the Commission to open a Notice of Inquiry to determine the new constitutional contours of Commission enforcement authority.

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

In the Matter of	)	
	)	
Audacy License, LLC, as Debtor-in-Possession (Assignor)	)	Application File Nos. 0000241074 et al.
	)	
And	)	
	)	
Audacy License, LLC (Assignee)	)	
	)	
Application for Consent to Assignment of Licenses	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement. Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. The Commission has under consideration the above-captioned application for transfer of control and assignment of license (Application) filed by Audacy License, LLC, Debtor-in-Possession (Audacy License DIP or Applicant) an indirect, wholly owned subsidiary of Audacy, Inc., Debtor-in-Possession (Audacy DIP).[1] The Application requests consent to the assignment of broadcast licenses in order to implement the Joint Prepackaged Plan of Reorganization (Reorganization Plan), by which Audacy DIP seeks to emerge from federal bankruptcy protection. Pursuant to the Reorganization Plan, former debt holders of Audacy DIP will receive new common stock in the reorganized company (Reorganized Audacy). Additionally, Audacy License DIP will assign its broadcast licenses to the reorganized Audacy License, LLC (Audacy License), which will be an indirect, wholly owned subsidiary of Reorganized Audacy.[2] Consistent with the approach adopted for numerous broadcasters that recently emerged from bankruptcy, the Applicant also requests[3] a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules to permit it to emerge from bankruptcy before filing a petition for declaratory ruling that would seek approval for Reorganized Audacy to have aggregate foreign ownership

[1] Application File Nos. 0000241074 et al. (filed Mar. 15, 2024, amended May 31, 2024). The Application was accepted for filing on March 15, 2024. *See Applications*, Public Notice, Report No. PN-1-240321-01 (Mar. 21, 2024). A list of Audacy License, LLC, Debtor-in-Possession stations (Stations) that are subject to the proposed assignment is provided in the Appendix, identified by call sign, service, community of license, Facility ID Number, and application file number.

[2] The current licensee is referred to as Audacy License DIP or Applicant. The reorganized licensee is referred to as Audacy License. The reorganized parent company is referred to as Reorganized Audacy.

[3] *See* Application Attach., Amended Comprehensive Exhibit (Amended Comprehensive Exhibit).

in excess of the 25% benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended (Act).[4]

2. We also have before us a petition to deny the Application filed by Media Research Center (MRC Petition),[5] and a related responsive pleading filed by Audacy License DIP.[6] For the reasons discussed below, we treat the MRC Petition as an informal objection and deny it, grant a waiver of section 1.5000(a)(1) consistent with past treatment of such requests by the Media Bureau (Bureau), the former International Bureau, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (collectively Bureaus), and condition grant of the Application on the filing of a petition for declaratory ruling within 30 days of the consummation of the assignment authorized herein.

II. BACKGROUND

A. Bankruptcy and Description of Transaction

3. The Applicant, which is indirectly owned and controlled by Audacy DIP, holds the broadcast licenses identified in the Appendix. The Applicant and Audacy DIP, along with certain other subsidiaries of Audacy DIP, are currently operating under the protection of Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (Bankruptcy Court).[7] On February 20, 2024, the Bankruptcy Court issued an order confirming Audacy DIP's Reorganization Plan by its Order Approving Debtors' Disclosure Statement and Confirming Debtors' Joint Prepackaged Plan of Reorganization (Confirmation Order) subject to Commission approval.[8]

4. Pursuant to the Reorganization Plan confirmed by the Court, Audacy DIP will cancel approximately $1.6 billion of existing debt and, in exchange, issue securities in Reorganized Audacy consisting of a combination of: (1) Class A New Common Stock, which entitles its holders to full voting rights; (2) Class B New Common Stock, which entitles its holders to limited voting rights that do not confer an attributable interest and is convertible to Class A New Common Stock; and (3) Special Warrants, which are pre-paid warrants carrying no voting rights and no right to economic distributions until exercised, that will be exercisable for New Common Stock of Reorganized Audacy subject to

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[4] 47 CFR § 1.5000(a)(1) (providing that an applicant for a broadcast station license shall file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act "at the same time that it files its application"); 47 U.S.C. § 310(b)(4).

[5] Petition to Deny of Media Research Center, Pleading File No. 0000243806 (filed April 22, 2024) (MRC Petition). MRC subsequently filed an untimely supplemental pleading, entitled "Memorandum in Support of Petition to Deny," Pleading File No. 0000249869 (filed July 30, 2024), which was neither served on the opposing party nor accompanied by a request for waiver, and which raises new issues for the first time. Therefore, pursuant to section 73.3584(e) we will not consider this improper filing. 47 CFR § 73.3584(e) ("Untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration."). In addition, an informal comment was filed by Ira Warren Patasnik, Pleading File No. 0000246460 (filed June 20, 2024). The Commission and individual Commissioners also received letters concerning this matter from members of Congress: Letter from Rep. Nicholas Langworthy to Chairwoman Rosenworcel received April 8, 2024; Letter from Rep. Chip Roy to Chairwoman Rosenworcel received April 23, 2024; Letter from Sen. Ted Cruz to Commissioner Starks dated July 9, 2024; Letter from Sen. Ted Cruz to Commissioner Gomez dated July 9, 2024.

[6] The Applicant filed its Opposition to Petition to Deny, Pleading File No. 0000244250 (filed May 2, 2024) (Opposition).

[7] *Id.* at 1.

[8] Application Attach., In re Audacy, Inc., et al., Case No. 24-90004 (CML) and jointly administered cases (Bank. S.D. Tex), Order Approving Debtors' Disclosure Statement and Confirming Debtors' Joint Prepackaged Plan of Reorganization.

various conditions, including compliance with the Act and the Commission's rules.[9] As the Applicant explains, upon emergence from bankruptcy the existing common stock of Audacy DIP will be cancelled and the new securities in Reorganized Audacy will be distributed to holders of debt of Audacy DIP. As a result, substantially all of Reorganized Audacy's voting stock will be held by new shareholders.[10]

5. Following the reorganization, Audacy License will ultimately be held and controlled by Reorganized Audacy through a chain of subsidiaries. Specifically, Reorganized Audacy will wholly own and directly control Audacy Capital, LLC. Audacy Capital, LLC will wholly own and directly control Audacy Operations, LLC, and Audacy Operations, LLC, will wholly own and directly control Audacy License. Reorganized Audacy and its subsidiaries, including Audacy License, will be U.S.-organized entities, and each will be registered in Delaware.

6. As a result of the exchange of debt for securities detailed above, Laurel Tree Opportunities Corporation (Laurel Tree) is expected to hold a controlling, attributable interest in the reorganized company, holding 57% or greater of the Class A New Common Stock of Reorganized Audacy.[11] According to the Application, the sole voting shareholder of Laurel Tree will be FPR Capital Holdings LLC (FPR Capital), a Delaware limited liability company, the sole member and manager of which is Fund for Policy Reform, a Delaware not-for-profit charitable trust.[12] Fund for Policy Reform holds 100% of the voting and equity interest of FPR Capital. Fund for Policy Reform, in turn, is governed by a four-member board of trustees, all of whom are U.S. citizens: Leonard Banchon, Maryann Canfield, Alexander Soros, and Michael Vachon.[13]

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[9] Amended Comprehensive Exhibit at 2-3. Each Special Warrant entitles the holder to the right to purchase, subject to the provisions of the Special Warrant Agreement, one share of Class A New Common Stock or Class B New Common Stock in Reorganized Audacy at the price of $0.0001 per share. *See* Application Attach., First Supplement to Plan Supplement, Exh. C, Special Warrant Agreement § 3.1 (Special Warrant Agreement). The Special Warrants do, however, include "make whole" mechanisms for the purpose of conferring upon the Special Warrant Holder the economic equivalent of non-voting common stock. *See, e.g.*, Special Warrant Agreement §§ 4.1, 4.2, 4.3, 4.4 (Warrant Agreement); *see also* § 6.1 ("No Rights or Liability as Stockholder"). For example, section 4.4 provides the Special Warrant Holder with the right to distributions in the event of an Organic Change (including the recapitalization, merger, sale of all or substantially all of the company's assets, and liquidation) of the company.

[10] *Id*. at 3. In addition, changes to corporate parent entities are also contemplated as part of the overall transaction. As detailed in the Amended Comprehensive Exhibit and the Application, such changes are *pro forma* in nature and will achieve the elimination of an intervening corporate entity (Audacy Corp., Debtor-in-Possession) that is an indirect parent of Audacy License DIP and an indirect subsidiary of Audacy DIP. *See* Amended Comprehensive Exhibit at 4

[11] *Id.* at 5.

[12] *Id.* at A-11 – A-14. FPR IM LLC (FPR IM), a Delaware limited liability company, will serve as the sole investment adviser with respect to Laurel Tree's investment in Reorganized Audacy and FPR Capital's investment in Laurel Tree. Fund for Policy Reform is FPR IM's sole member. *Id.*

FPR Capital Holdings' voting shares represent less than 1% of the equity of Laurel Tree. Quantum Endowment Finance Limited Partnership ("QEFLP"), a Delaware limited partnership, will hold 100 percent of Laurel Tree's non-voting shares (and more than 99 percent of its equity). Under the Commission's rules, QEFLP's interest is non-attributable. *See* 47 CFR § 73.3555, Note 2; Amended Comprehensive Exhibit at A-9, n.3 ("No individual or entity is expected to hold an attributable interest in Reorganized Audacy as a result of the Commission's EDP attribution standard."). The sole limited partner of QEFLP will be Foundation to Promote Open Society ("FPOS"), a Delaware 501(c)(3) non-profit corporation. FPOS is governed by a three-member board of directors, all of whom are U.S. citizens: George Soros, Alexander Soros, and Andrea Soros Colombel. *Id.* at A-11 n. 6.

[13] The Applicant states that The Fund for Policy Reform's board of trustees is self-perpetuating, with no entity or individual possessing the right to appoint or remove any trustee. Rather, upon an opening in the board, the remaining trustees select the replacement. *Id.* at A-12.

7. The Application states there are not any other attributable shareholders following the distribution of new common stock in Reorganized Audacy.[14]

8. As described in the next section, to effectuate this plan and enable Audacy DIP to emerge from bankruptcy promptly, the Applicant proposes the same two-step approval process requested by previous broadcast and common carrier wireless licensees emerging from bankruptcy that have foreign debt-holders. First, the Applicant seeks approval of the Application with certain restrictions on potential foreign ownership interests among the special warrant holders in order to comply with the 25% foreign ownership interest threshold contained in section 310(b) of the Act. Second, within 30 days of the proposed restructuring, it commits to filing a petition for declaratory ruling seeking approval of any foreign ownership interests in excess of 25% of the reorganized company.[15]

B. Section 1.5000(a)(1) Waiver Request

9. Consistent with past cases of broadcasters and common carrier wireless licensees emerging from bankruptcy, the Applicant requests a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, to the extent necessary, to permit Audacy DIP and its subsidiaries to emerge from bankruptcy and consummate the transaction before Audacy License files a petition for declaratory ruling to seek approval for foreign ownership interests in Reorganized Audacy in excess of the 25% benchmark set forth in section 310(b)(4) of the Act.[16] The Applicant requests permission to file such a petition no later than 30 days following the date of emergence from bankruptcy.[17] The Applicant seeks this approval in conjunction with its use of special warrants and other conditions intended to ensure that the aggregate foreign ownership, both in terms of equity and voting, of the holders of Reorganized Audacy's new common stock will not exceed the 25% benchmark established by section 310(b)(4) of the Act.[18]

10. Audacy notes that the Bureau has approved similar requests in prior transactions involving media companies emerging from bankruptcy,[19] as have other Bureaus. The Applicant contends that grant of its request and temporary authorization of its use of special warrants would serve the public interest by facilitating Audacy DIP's emergence from the bankruptcy process in a manner consistent with the Commission's practice of accommodating federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligations under the Act.[20] The Applicant notes that the Commission has long recognized that facilitating the "successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors."[21] The Applicant notes further that its request is interim in nature and will not interfere with the

[14] The complete proposed ownership of Reorganized Audacy and parties to the application are provided in Attachment A of the Amended Comprehensive Exhibit to the Application. Individuals or entities that hold interests amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee are deemed to be attributable shareholders for purposes of the Commission's ownership rules. *See* 47 CFR § 73.3555, Note 2.

[15] Amended Comprehensive Exhibit at 1, 9-12.

[16] *Id.*

[17] *Id*.

[18] *Id*. at 9.

[19] *Id.* at 10-11, note 19 (citing *Cumulus Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB AD 2018); *Liberman Television of Dallas License LLC, Debtor-In-Possession et al.*, Order, 34 FCC Rcd 8543 (MB VD 2019); and *Alpha Media Licensee LLC, Debtor-in-Possession et al.*, Order 36 FCC Rcd 10891 (MB AD 2021)).

[20] Amended Comprehensive Exhibit at 11-12.

[21] *Id.* at 11 (quoting *Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, et al., Applications for Consent to Assign and Transfer Control*, Order, 24 FCC Rcd 14360, 14369 para. 19 (WCB, MB, WTB, IB 2009) (internal citations omitted)).

Commission's public interest obligations, nor would it result in any public interest harm, as any foreign ownership of the company's new common stock will be limited to less than 22.5% by operation of the Bankruptcy Plan,[22] and Reorganized Audacy will promptly file the appropriate petition for declaratory ruling with 30 days of emerging from bankruptcy.[23]

C. Pleadings

11. *MRC Petition*. MRC describes itself as a media watchdog and a research and education organization, but makes no specific assertion as to standing as a party in interest to file the MRC Petition. Nor does MRC articulate the harm it claims to suffer, or that it would suffer, as a direct result of the proposed assignment of licenses and the emergence of Audacy from bankruptcy. While MRC objects generally to the potential involvement of George Soros and Soros Fund Management in the transaction, its primary substantive complaint is that the Application seeks a waiver of 1.5000(a)(1) of the Commission's rules.[24] MRC also objects to the Applicant's proposed use of special warrants to limit the involvement of potential foreign owners.[25] MRC asserts that the Applicant seeks specialized treatment and has failed to justify the grant of a temporary waiver or the use of special warrants as it emerges from bankruptcy.[26]

12. *Opposition*. In its Opposition, Audacy License DIP argues that MRC does not have standing to file a petition to deny and that its submission is procedurally deficient. Audacy License DIP states that MRC makes no effort to demonstrate that it is a party in interest in this matter, including by substantiating that it or its members are listeners or competitors of the Stations, that it or its members would suffer some cognizable injury as a result of the transaction, or that grant of the Application would cause it or its members harm (or conversely that dismissal of the Application would provide redress for their injury).[27] Audacy License DIP states further that the MRC Petition is also deficient as it does not set forth any specific allegations of fact that grant of the Application would be inconsistent with the public interest, nor does it contain an affidavit supporting any allegations of fact contained in the pleading.[28] Audacy License DIP notes further that the pleading was not served on the Applicant, as required by the Commission's rules.[29]

13. In addition to arguing that the pleading should be summarily dismissed as procedurally defective, Audacy License DIP argues that the MRC Petition is incorrect in asserting that the temporary and limited waiver sought by the Applicant is somehow novel, vague, or inappropriate.[30] Rather, the Applicant notes that the mechanisms it seeks to employ as it emerges from bankruptcy have always been approved in previous bankruptcy cases.[31] In sum, Audacy argues that the relief it seeks in order to facilitate its bankruptcy reorganization is fully consistent with precedent.[32]

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[22] Amended Comprehensive Exhibit at 9. The Applicant states that this threshold will be below the statutory maximum of 25% foreign ownership permitted under the Act and accordingly will promote the liquidity of Reorganized Audacy's stock. Application Attach., Disclosure Statement for the Joint Prepackaged Plan of Reorganization at 117.

[23] Amended Comprehensive Exhibit at 11-12.

[24] MRC Petition at 2-3.

[25] *Id*. at 3-4.

[26] *Id*.

[27] Opposition at 2-3.

[28] *Id.* at 3.

[29] *Id.*

[30] *Id*. at 3-4.

[31] *Id*. at 3-5.

III. DISCUSSION

A. Standard of Review

14. Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby.[33] In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[34] If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[35] If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.[36]

B. Procedural Issues

15. *MRC Petition.* Section 309(d)(1) of the Act provides that only a "party in interest" may file a petition to deny a proposed assignment.[37] A petition to deny must "contain specific allegations of fact sufficient to show that the petitioner is a party in interest," as well as contain the necessary factual allegations to support a *prima facie* case that grant of the application would be inconsistent with the public interest, convenience, and necessity.[38] Under the Commission's long-standing precedent, party-in-interest status will be accorded to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury to the petitioner of a direct, tangible, or substantial nature.[39] In the context of an assignment of license proceeding this means the petitioner must allege, and prove, that it has suffered or will suffer an injury in fact, that there is a causal link between the proposed assignment and the injury in fact, and that not granting the assignment would remedy or prevent the injury in fact.[40] With

(Continued from previous page)

[32] *Id*. at 4.

[33] 47 U.S.C. § 310(d).

[34] *See, e.g.*, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005).

[35] *Id.*

[36] 47 U.S.C. § 309(e); *see also General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15 n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002).

[37] 47 U.S.C. § 309(d)(1); *see also* 47 CFR § 73.3584.

[38] *Id*.; 47 U.S.C. § 309(d)(1) (requiring that a petition to deny "contain specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent with" the standards for grant of the application at issue and requiring that such allegations, except for those of which official notice may be taken "be supported by affidavit of a person or persons with personal knowledge thereof").

[39] *See*, *e.g., Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149, 7152 (2017) (citing *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992)).

[40] *See, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (summarizing constitutional minimum requirements for Article III standing that the party must (1) have suffered an "injury in fact" that is concrete and particularized and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision); *MCI Communications Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794-5 (1997) (affirming that entities claiming standing must allege and prove a personal injury that is "fairly traceable" to the challenged action and a substantial likelihood that the relief requested will redress the injury claimed).

regard to broadcast licenses specifically, the Commission has found that a petitioner seeking to deny a broadcast application may establish standing if it is a competitor in the market suffering signal interference, a competitor in the market suffering economic harm, a resident of the station's service area or a regular listener.[41]

16. We find that MRC fails to demonstrate that it has standing in this proceeding. In particular, MRC fails to demonstrate that grant of the Application would result in, or be reasonably likely to result in, some injury to MRC of a direct, tangible, or substantial nature. Further, the filing is devoid of any specific allegations of fact alleging that MRC is a party in interest, including, potentially, that it is a competitor in the market or that its members either reside in the Stations' markets or are listeners of the Stations. Indeed, MRC does not make any assertion as to its standing to file a petition to deny in this proceeding. We therefore find that under the terms of the statute MRC is not a "party in interest" and thus lacks standing to file a petition to deny. Accordingly, we dismiss the MRC filing as a petition to deny. We will, however, treat the submission as an informal objection pursuant to section 73.3587 of the Commission's rules.[42]

17. Audacy License DIP alleges that MRC's pleading is procedurally deficient in additional ways. We agree. In addition to failing to demonstrate standing, MRC's filing fails to meet other required elements of 309(d)(1) as well, including that (1) the petitioner serve a copy of the petition on the applicant and (2) that the petition be supported by an affidavit of a person or persons with personal knowledge of the facts alleged in the petition.[43] The Commission cannot waive these statutory requirements.[44] Accordingly, for these additional reasons, we dismiss the MRC filing as a petition to deny, but, as noted above, we will treat the pleading as an informal objection.[45]

18. *Other Objecting Parties*. In addition, we also consider the untimely comment received from Ira Warren Patasnik (Patasnik) as an informal objection to the Application.[46] That submission, made nearly two months after the period for the filing of petitions to deny had elapsed, makes a number of wide-ranging comments about George Soros and his potential involvement with the Audacy stations. The Patasnik submission, however, fails to satisfy any of the necessary elements of a petition to deny discussed above.

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[41] *See, e.g., New Life Community Temple of Faith, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 648, 651, para. 8 (2019) (citing *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252 (2014); *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (D.C. Cir. 1966)); *Entercom License, LLC, Hearing Designation Order, 31 FCC Rcd 12196, 12205, para. 22 (2016)*.

[42] 47 CFR § 73.3587; *see also Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12206, para. 23 (2016) (petition to deny treated as an informal objection due to lack of standing).

[43] 47 U.S.C. § 309(d)(1) (stating that the "petitioner shall serve a copy of such petition on the applicant" and that a petition to deny "contain specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent with" the standards for grant of the application at issue and requiring that such allegations, except for those of which official notice may be taken "be supported by affidavit of a person or persons with personal knowledge thereof"); *see also* 47 CFR § 73.3584.

[44] *See, e.g.*, *Great Trails Broadcasting Corp.*, Memorandum Opinion and Order, 39 FCC 2d 39, 45, para. 18 (1972); *Finer Living, Inc.*, Memorandum Opinion and Order, 5 FCC 2d 984, 987 (1966).

[45] *See infra* paras. 29-30.

[46] *See id*.

C. Substantive Issues

19. For the reasons discussed below, we reject the arguments in the MRC Petition and the Patasnik objection, grant a waiver of Section 1.5000(a)(1), and find that grant of the Application, conditioned upon the filing of a petition for declaratory ruling within 30 days of closing, is in the public interest.

1. *Waiver of Section 1.5000(a)(1).*

20. As stated above, to promptly effectuate its reorganization plan, the Applicant proposes a two-step process. It first seeks Commission approval of assignment of the station licenses. Once that assignment is consummated, it proposes that Reorganized Audacy will file a petition for declaratory ruling within 30 days for approval to have foreign ownership interests above the 25% benchmark set forth in section 310(b) of the Act.[47] In this regard, the Applicant requests a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, which requires an applicant for the transfer of control or assignment of a broadcast station license to file a petition for declaratory ruling "at the same time that it files its application." As the Applicant notes, in asking for this waiver, it seeks no more than what other licensees emerging from bankruptcy have been granted.[48] We agree, and consistent with our long-held policy of, when possible, accommodating the goals of the federal bankruptcy laws with the goals inherent in the Communications Act and facilitating the emergence of licensees from bankruptcy,[49] we find there is good cause to grant the waiver.

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[47] 47 U.S.C. § 310(b). *See* Amended Comprehensive Exhibit at 1.

[48] Amended Comprehensive Exhibit at 10. *See, e.g., Cumulus Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB 2018) (approving transfer of control applications involving use of special warrants to facilitate the licensee's emergence from bankruptcy); *iHeart Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 34 FCC Rcd 2409 (MB 2019) (approving transfer of control applications involving use of special warrants to facilitate the licensee's emergence from bankruptcy); *Liberman Television of Dallas License LLC, Debtor-in-Possession et al.,* Order, 34 FCC Rcd 8543 (MB 2019) (approving transfer applications and the use of special warrants for potential foreign interest holders, along with a temporary waiver of section 1.5000(a)(1) of the Commission's rules, conditioned upon Liberman filing a petition for declaratory ruling within 30 days of closing the transaction); *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries*, Public Notice, 35 FCC Rcd 10076 (WCB, IB, WTB 2020) (finding that a temporary and limited waiver of section 1.5000(a)(1) would effectively provide interim section 310(b)(4) authority and enable Windstream's prompt emergence from bankruptcy while preserving the ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy); *Applications Granted for the Transfer of Control of Fusion Connect, Inc., Debtor-in-Possession, and Subsidiaries*, Public Notice, 35 FCC Rcd 409 (WCB, IB 2020) (finding that a temporary and limited waiver of section 1.5000(a)(1) would effectively provide interim section 310(b)(4) authority in order to enable Fusion Connect's prompt emergence from bankruptcy while preserving the ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy); *America-CV Station Group, Debtor-in-Possession*, Order, 36 FCC Rcd 7291 (MB 2021) (approving transfer of control applications and temporary waiver of section 1.5000(a)(1) to facilitate the licensee's emergence from bankruptcy); and *Alpha Media Licensee LLC, Debtor-in-Possession et al.*, Order, 36 FCC Rcd 10891 (MB 2021) (approving transfer applications and the use of special warrants for potential foreign interest holders, along with a temporary waiver of section 1.5000(a)(1) of the Commission's rules, conditioned upon New Alpha filing a petition for declaratory ruling within 30 days of closing the transaction).

[49] *See, e.g., WorldCom, Inc. and its Subsidiaries, (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses,* 18 FCC Rcd 26484, 26503 para. 29 (2003) (*WorldCom/MCI Transfer Order*). Further, as the Commission stated, "facilitating a telecommunications service provider's successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors." *Id. See also LaRose v. Federal Communications Commission*, 494 F.2d 1145, 1148 (D.C. Cir. 1974) ("In recognition of the public interest in protecting innocent creditors, the Commission will approve the sale and assignment of the bankrupt's license when the transaction will not unduly interfere with the FCC mandate to

(continued….)

21. *The Record.* The Applicant argues that because the processing and reviewing of a petition for declaratory ruling typically takes several months, seeking that ruling concurrently with the Application would significantly delay the emergence of Audacy from bankruptcy, imposing substantial burdens on the company, which in turn would impact radio broadcast services to the public. The Applicant contends that the expedited emergence of Audacy from bankruptcy with substantially less debt and improved operational arrangements will preserve current radio broadcast operations and allow it to remain a competitive radio broadcaster. The Applicant further contends that emerging from bankruptcy more quickly will also avoid significant additional administrative costs that the company would incur in a protracted bankruptcy proceeding.[50] By contrast, the Applicant argues, delaying its emergence from bankruptcy would imperil its restructuring.[51] Ultimately, it argues, a waiver would allow the company to more quickly focus attention and resources toward serving the local communities in which its stations operate and fulfilling its obligations to its advertisers. The Applicant commits that Reorganized Audacy will file a petition for declaratory ruling within 30 days after the consummation of the assignment of license and will accept that requirement as a condition of the grant of the Application.[52] It also states that the terms of the Special Warrants will ensure that any foreign holders would not have any equity or voting interests in contravention of the Communications Act and Commission rules, and that after emerging from bankruptcy, it will continue to monitor and assess its compliance with applicable foreign ownership limitations under the Communications Act, the Commission's rules, and any declaratory ruling that the Commission issues to ensure it does not exceed those limits.[53]

22. MRC objects, arguing that approval of the requested waiver is unprecedented and that the Applicant is somehow seeking specialized treatment.[54] MRC is incorrect. The Applicant is not asking the Commission to break new ground; rather, it is following a well-worn path. The stock structure proposed by the Applicant has been approved for decades.[55] And, as the Applicant has stated, the Bureaus have previously addressed the need to balance the competing public interests of facilitating a licensee's emergence from bankruptcy with the need to review and approve foreign ownership above the statutory threshold and have accordingly granted waivers to permit the two-step approval process the Applicant seeks to use in this case.[56]

23. *Discussion.* The Commission's rules may be waived for good cause shown.[57] Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the rule and

(Continued from previous page)
insure that broadcast licenses are used and transferred consistently with the Communications Act."); *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 para. 17 (2016).

[50] Amended Comprehensive Exhibit at 11.

[51] *Id.* at 12.

[52] *Id.*

[53] *Id.*

[54] MRC Petition at 3-4.

[55] *See, e.g., Applications of Univision Holdings, Inc, and Perenchio Television, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6674 (1992).

[56] We note that prior to the Commission streamlining its foreign ownership rules and procedures for broadcast licenses, which became effective in 2017, few broadcast licensees sought approval for foreign ownership above the 25% benchmark contained in section 310(b). *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*, Report and Order, 31 FCC Rcd 11272 (2016).

[57] 47 CFR § 1.3.

such deviation will serve the public interest.[58] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[59] It may also take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.[60]

24. It has long been the Commission's policy to facilitate the emergence of licensees from bankruptcy in order to "support the goals of the bankruptcy laws and, where possible, to accommodate those goals with the goals inherent in the Communications Act."[61] Granting a temporary limited waiver of the petition for declaratory ruling filing requirement here effectively provides Audacy with only interim section 310(b)(4) authority[62] – enabling its prompt emergence from bankruptcy but still preserving the Commission's and the Executive Branch's ability to review the proposed foreign ownership.[63] The Applicant has committed that Reorganized Audacy will file a petition for declaratory ruling within 30 days of the consummation of the assignment of the station licenses, so that the Commission can review the foreign ownership status of the Special Warrants under the Act and the Commission's rules.[64] The Commission retains the authority, upon review of the petition, to determine that ownership of the Special Warrants (or any equity interests into which they may be converted) would be inconsistent with the public interest under section 310(b)(4). Furthermore, under the terms of the Special Warrants, "no [Special Warrant] Holder shall be entitled to exercise any Special Warrant until all Regulatory Approvals required to be made to or obtained from any Governmental Authority with jurisdiction over the Reorganized Parent or its Subsidiaries have been made or obtained," and

[58] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

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

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

[61] *See, e.g., WorldCom/MCI Transfer Order,* 18 FCC Rcd at 26503 para. 29 ("facilitating a telecommunications service provider's successful emergence from bankruptcy advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors"). *Id. See also LaRose v. Federal Communications Commission*, 494 F.2d 1145, 1148 (D.C. Cir. 1974) ("In recognition of the public interest in protecting innocent creditors, the Commission will approve the sale and assignment of the bankrupt's license when the transaction will not unduly interfere with the FCC mandate to insure that broadcast licenses are used and transferred consistently with the Communications Act."); *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 para. 17 (2016).

[62] *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc.*, *Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as Amended*, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4444, para. 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority). We note that the Commission staff frequently works with applicants and licensees to address and resolve impediments to identifying ownership interests. *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*, Report and Order, 31 FCC Rcd 11272, 11312, para. 88, n .224 (2016); *cf.* 47 CFR § 1.5004(f) (providing that a licensee that learns of an investment that renders the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership must file a petition for declaratory ruling or take other remedial action within 30 days of the date it learned of the non-compliant foreign interest(s)). As is the case with petitions for declaratory ruling filed pursuant to section 1.5004(f)(1), the Commission ultimately may require divestiture of a foreign investor's interest(s) in Reorganized Audacy and its subsidiaries. *Id*

[63] The Commission refers section 310(b) foreign ownership petitions to the Executive Branch for review for national security, law enforcement, foreign policy and/or trade policy concerns. 47 CFR § 1.40001(a)(1). *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* Report and Order, 35 FCC Rcd 10927, 10934-35, para. 24 (2020).

[64] Amended Comprehensive Exhibit at 12.

Reorganized Audacy may "prohibit the exercise of any Special Warrants if such exercise would . . . result in a violation of applicable laws or regulations."[65]

25. We find that consistent with our policy to accommodate the federal bankruptcy process where possible, and based on the particular facts presented here, the use of special warrants proposed by the Applicant and a temporary waiver of section 1.5000(a)(1) will facilitate the prompt emergence of Audacy DIP from bankruptcy, providing the benefits the Applicant describes while maintaining the required review of the proposed foreign ownership, and will thus serve the public interest.

26. Given the assumptions underlying the Application and waiver request, we clarify that, for purposes of calculating whether an individual or entity is a disclosable interest holder or requires specific approval in the context of filing the petition for declaratory ruling, Audacy License should include any outstanding special warrants in its calculation of the individual's or entity's pro rata equity interest (i.e., on a fully diluted basis).[66] The use of special warrants will be considered on a case-by-case, temporary and limited basis in the context of a bankruptcy proceeding until the filing of a petition for declaratory ruling concerning foreign ownership upon closing of the transaction.[67]

2. Compliance with Ownership Rules.

27. As detailed in the Application, pursuant to the equity/debt plus rule, the indirect controlling parent of Laurel Tree, Fund for Policy Reform (FPR), holds a debt interest in Latino Media Network, LLC (LMN) that will become attributable upon FPR's acquisition of an attributable interest in Reorganized Audacy. As a result, in a number of markets FPR will hold an attributable interest in stations licensed to LMN as well as the reorganized Audacy License. The Applicant asserts that the resulting combination of ownership interests complies with the Commission's rules.[68] In addition, Audacy License DIP requests a continuation of the waiver currently held by the Applicant permitting common ownership of an expanded band AM station along with eight other broadcast radio stations in the Kansas City, MO-KS Nielsen Audio Market.[69]

28. After reviewing the Applicant's showing[70] and the relevant markets, we find that the combined ownership interests in those markets where FPR will hold an attributable interest in both Reorganized Audacy and LMN complies with the Commission's Local Radio Ownership Rule.[71] In addition, we grant the Applicant's request for a continuation of the waiver of the Local Radio Ownership Rule previously granted for the Kansas City Nielsen Audio market. As noted in the Application, Audacy License DIP currently holds a waiver of section 73.3555(a) to retain an expanded band AM station, which

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[65] *See* Special Warrant Agreement § 3.3(f).

[66] *See, e.g.*, *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, & Subsidiaries*, 35 FCC Rcd 10076, 10083 (WCB, IB, WTB 2020).

[67] *See, e.g.*, *Cumulus Media Inc. Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 35 FCC Rcd 5461 (MB 2020).

[68] Amended Comprehensive Exhibit at 7-8.

[69] *Id*.

[70] *Id.* at 7-9. At the time of application, Audacy License DIP had identified a single market—the Greenville-Spartanburg, SC Nielsen Audio Market—where the Applicant's existing combination of stations no longer complied with the Local Radio Ownership Rule as a result of changes in the market over time. Accordingly, Audacy License DIP divested a station in that market, WSPA-FM, Simpsonville, SC (Facility ID No. 53623), in order to remain in compliance with the ownership limits. *See* 47 CFR § 73.3555, Note 4. The assignment of license of WSPA-FM to Norsan Media LLC was approved by the Media Bureau pursuant to Application File No. 0000242527 (granted July 9, 2024) and consummated on July 31, 2024. *See* Notice of Consummation, Application File No. 0000249961 (filed Aug. 1, 2024).

[71] 47 CFR § 73.3555(a).

has allowed it to retain an attributable interest in nine commercial broadcast radio stations.[72] The Bureau extended the waiver previously[73] and we find that it is in the public interest to do so again here in order to preserve AM service for the public.

3. Other Objections.

29. We find that MRC and Patasnik have failed to raise a substantial and material question of fact as to whether grant of the Application would serve the public interest. MRC and Patasnik also object to the potential involvement of George Soros or the Soros Fund Management; however, we note that neither of those entities appear as attributable interest holders in the Application. Even assuming that George Soros and/or the Soros Fund Management were attributable interest holders, the MRC Petition and the Patasnik comment fail to raise a substantial and material question of fact as to those parties' qualifications to hold an interest in a broadcast license.[74] Accordingly, we reject both MRC's and Patasnik's objection as to the potential involvement of George Soros and the Soros Fund Management.

30. To the extent that MRC or Patasnik objects to the programming that Audacy License or its attributable interest holders might air on the Stations, we note that it is a well-established and fundamental principle that the Commission does not interfere with the programming decisions of licensees, nor does it consider issues of programming choice when reviewing an application for the assignment or transfer of a broadcast license.[75] Indeed, both the First Amendment to the Constitution and section 326 of the Act prohibit the Commission from interfering with the free speech rights of broadcast licensees, including the choice of programming or formats.[76] Accordingly, it would be improper for us to take adverse action on the Application based upon MRC's or Patasnik's speculation about the licensee's future programming decisions. As the Commission has stated clearly—and repeatedly—in the past, a "licensee has broad discretion — based on its right to free speech — to choose, in good faith, the programming it believes serves the needs and interests of its community of license."[77]

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[72] Audacy License DIP presently holds an interest in four FM stations and five AM stations in the Kansas City Market pursuant to a waiver granted in *Entercom Kansas City License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 24197 (2002) (waiving the local radio ownership provisions of section 73.3555(a)(1) for five years from the licensing of KXTR(AM)).

[73] The waiver was subsequently extended in 2017. *See Entercom Communications and CBS Radio Seek Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 32 FCC Rcd 9380, 9387, para. 23 (MB 2017).

[74] *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 84 FCC Rcd 8436, 8453, para. 32 (2019) (speculative allegations are not sufficient to raise a substantial and material question of fact as to whether grant of applications seeking consent to the transfer of control of licensees would serve the public interest); *Pinelands, Inc. and BHC Communications, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6058, n.2 (1992) (denying request for investigation based solely on speculation).

[75] *See, e.g., Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981) (review of program formats (1) is not required by the Communications Act of 1934, as amended, (2) would not benefit the public, (3) would deter innovation, and (4) would impose substantial administrative burdens on the Commission).

[76] U.S. Const. amend. I; 47 U.S.C. § 326 ("Nothing in [the] Act shall be understood or construed to give the Commission the power of censorship over radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated . . . by the Commission which shall interfere with the right of free speech by means of radio communication").

[77] *Pacifica Foundation, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 13566, 13566, para. 3 (2016) (rejecting call for Commission to take adverse action on a broadcast license renewal application based upon the subjective determination of a listener group that the station had broadcast purportedly inappropriate programming citing constitutional and statutory free speech protections) (citations omitted). *See also Time-Life Broadcast, Inc.*,

(continued….)

IV. CONCLUSION

31. We have reviewed the Application and related filings. For the reasons set forth above, we find that the proposed assignee, Audacy License, is fully qualified and conclude that the grant of the Application, conditioned upon the filing of a petition for declaratory ruling within 30 days of closing on the transaction described therein, would serve the public interest.

V. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED** that, pursuant to sections 73.3584 and 73.3587 of the Commission's rules, 47 CFR §§ 73.3584, 73.3587, the Petition to Deny filed by Media Research Center on April 22, 2024 (Pleading File No. 0000243806) **IS DISMISSED** as a procedurally defective petition to deny **AND ALTERNATIVELY DENIED** on the merits as an informal objection.

33. **IT IS FURTHER ORDERED** that the Informal Objection filed by Ira Warren Patasnik on June, 20, 2024 (Pleading File No. 0000246460) **IS DENIED.**

34. **IT IS FURTHER ORDERED** that the request for a temporary waiver of section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), **IS GRANTED.**

35. **IT IS FURTHER ORDERED** that the above-captioned application (Application File No. 0000241074 et al.) **IS GRANTED**, conditioned upon the filing, no later than 30 days after consummation of the assignment of licenses, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4).

36. **IT IS FURTHER ORDERED** that section 73.3555(a) of the Commission's rules, 47 CFR § 73.3555(a), **IS WAIVED** to permit the assignment of Audacy License DIP's existing authorizations in the Kansas City, Missouri, market to Audacy License as proposed in the above-captioned application (Application File Nos. 0000241074 et al.).

37. These actions are taken pursuant to sections 4(i) and (j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(Continued from previous page)
Memorandum Opinion and Order, 33 FCC 2d 1081, 1092 (1972); *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted)).

Appendix

STATIONS SUBJECT TO NON PRO FORMA ASSIGNMENT FROM AUDACY LICENSE, LLC, AS DEBTOR-IN-POSSESSION, TO AUDACY LICENSE, LLC

Call Sign	Service	City	State	Facility ID	File Number
WROQ	FM	ANDERSON	SC	318	0000241074
WQMG	FM	GREENSBORO	NC	47078	0000241075
KITS-FM4	FB	ANTIOCH	CA	18526	0000241076
KALC	FM	DENVER	CO	59601	0000241077
KRBQ	FM	SAN FRANCISCO	CA	65486	0000241078
WUSN	FM	CHICAGO	IL	28620	0000241079
WBZA	FM	ROCHESTER	NY	71204	0000241080
WSTR	FM	SMYRNA	GA	30822	0000241081
K281AD	FX	OLYMPIA	WA	18515	0000241082
WEEI	AM	BOSTON	MA	1912	0000241083
WMC-FM	FM	MEMPHI	TN	59449	0000241084
KRSK	FM	MOLALLA	OR	68213	0000241085
W280FJ	FX	BLOOMSBURG	PA	141527	0000241086
WCFS-FM	FM	ELMWOOD PARK	IL	71283	0000241087
KQRC-FM	FM	LEAVENWORTH	KS	74101	0000241089
KNX	AM	LOS ANGELES	CA	9616	0000241090
WSSP	AM	MILWAUKEE	WI	27030	0000241091
WDZH	FM	DETROIT	MI	25448	0000241092
KITS-FM1	FB	WALNUT CREEK	CA	18524	0000241093
WPHI-FM	FM	JENKINTOWN	PA	30572	0000241094
W253BI	FX	GLEN ALLEN	VA	148159	0000241095
KIFM	AM	WEST SACRAMENTO	CA	67848	0000241096
WBEB	FM	PHILADELPHIA	PA	71382	0000241097
K276FK	FX	DENVER	CO	157107	0000241098
KYCH-FM	FM	PORTLAND	OR	35034	0000241099
KMOX	AM	ST. LOUIS	MO	9638	0000241100
KMBZ	AM	KANSAS CITY	MO	6382	0000241101
KEZK-FM	FM	ST. LOUIS	MO	13507	0000241102
KFRC-FM	FM	SAN FRANCISCO	CA	20897	0000241103
WXYT	AM	DETROIT	MI	28627	0000241104
WQAL	FM	CLEVELAND	OH	72889	0000241105
WINS	AM	NEW YORK	NY	25451	0000241106
KISW	FM	SEATTLE	WA	47750	0000241107
WWBX	FM	BOSTON	MA	26897	0000241108
WKRF	FM	TOBYHANNA	PA	14643	0000241109
KFH	AM	WICHITA	KS	53598	0000241110
WRVA	AM	RICHMOND	VA	11914	0000241111
WVKL	FM	NORFOLK	VA	4672	0000241112
WSKY-FM	FM	MICANOPY	FL	23352	0000241113

Call Sign	Service	City	State	Facility ID	File Number
WOMX-FM	FM	ORLANDO	FL	47746	0000241114
WNEW-FM	FM	NEW YORK	NY	25442	0000241115
W286DJ	FX	RICHMOND	VA	140347	0000241116
WPTE	FM	VIRGINIA BEACH	VA	64004	0000241117
KAMX	FM	LULING	TX	48651	0000241118
WTEM	AM	WASHINGTON	DC	25105	0000241119
WXRT	FM	CHICAGO	IL	16853	0000241120
KRLD-FM	FM	DALLAS	TX	1087	0000241121
WYCD	FM	DETROIT	MI	1089	0000241122
WDSY-FM	FM	PITTSBURGH	PA	18525	0000241123
WDOK	FM	CLEVELAND	OH	28525	0000241124
KGMZ-FM	FM	SAN FRANCISCO	CA	25446	0000241125
WKXJ	FM	WALDEN	TN	14735	0000241126
WVEE	FM	ATLANTA	GA	63776	0000241127
KSON	FM	SAN DIEGO	CA	59816	0000241128
KZPT	FM	KANSAS CITY	MO	6379	0000241129
WBGB	FM	BOSTON	MA	9639	0000241130
KIKK	AM	PASADENA	TX	25450	0000241131
WFUN-FM	FM	ST. LOUIS	MO	27022	0000241132
WLIF	FM	BALTIMORE	MD	28637	0000241133
W249AR	FX	ASHEVILLE	NC	66403	0000241134
WWEI	FM	EASTHAMPTON	MA	11295	0000241135
KLUC-FM	FM	LAS VEGAS	NV	47744	0000241136
KNSS-FM	FM	CLEARWATER	KS	23292	0000241137
KJCE	AM	ROLLINGWOOD	TX	1243	0000241138
KCBS-FM	FM	LOS ANGELES	CA	9612	0000241139
WRVR	FM	MEMPHIS	TN	34375	0000241140
KWFN-FM2	FB	RAMONA	CA	203667	0000241141
KLUV	FM	DALLAS	TX	67195	0000241142
KROQ-FM1	FB	SANTA CLARITA	CA	180881	0000241143
KMXB	FM	HENDERSON	NV	51676	0000241144
WKSE	FM	NIAGARA FALLS	NY	34384	0000241145
K254CR	FX	ST. LOUIS	MO	138424	0000241146
WPHT	AM	PHILADELPHIA	PA	9634	0000241147
KITS	FM	SAN FRANCISCO	CA	18510	0000241148
WGR	AM	BUFFALO	NY	56101	0000241149
WVEI-FM	FM	WESTERLY	RI	71720	0000241150
WKRK-FM	FM	CLEVELAND HEIGHTS	OH	74473	0000241151
W225CZ	FX	NEW ORLEANS	LA	148534	0000241152
WYRD	AM	GREENVILLE	SC	34389	0000241153
WAAF	AM	SCRANTON	PA	36200	0000241154
KWFN	FM	SAN DIEGO	CA	30832	0000241155
WCBS	AM	NEW YORK	NY	9636	0000241156

Call Sign	Service	City	State	Facility ID	File Number
KLLC-FM2	FB	PLEASANTON	CA	178408	0000241157
KYYS	AM	KANSAS CITY	KS	73938	0000241158
W284AP	FX	BUFFALO	NY	9254	0000241159
WFBC-FM	FM	GREENVILLE	SC	34390	0000241160
WPGC-FM	FM	MORNINGSIDE	MD	28632	0000241161
WBMX	FM	CHICAGO	IL	28621	0000241162
KFRG	FM	SAN BERNARDINO	CA	1241	0000241163
KGMZ-FM2	FB	WALNUT CREEK	CA	25447	0000241164
WODS	AM	WEST HAZLETON	PA	22667	0000241165
K277AE	FX	SEATTLE	WA	18522	0000241166
WCCO	AM	MINNEAPOLIS	MN	9642	0000241167
KGON	FM	PORTLAND	OR	2432	0000241168
KKDO	FM	FAIR OAKS	CA	6810	0000241169
KNDD	FM	SEATTLE	WA	34530	0000241170
WZGC	FM	ATLANTA	GA	13805	0000241171
WGGY-FM3	FB	HAZLETON	PA	203403	0000241172
WOLX-FM	FM	BARABOO	WI	60236	0000241173
WHHL	FM	HAZELWOOD	MO	74578	0000241174
WLZL	FM	COLLEGE PARK	MD	20983	0000241175
KWFN-FM4	FB	ESCONDIDO	CA	203664	0000241176
WGGY-FM1	FB	HONESDALE	PA	91317	0000241177
KRXQ	FM	SACRAMENTO	CA	20354	0000241178
WCBS-FM	FM	NEW YORK	NY	9611	0000241179
WMC	AM	MEMPHIS	TN	19185	0000241180
WUSY	FM	CLEVELAND	TN	12315	0000241181
KCSP	AM	KANSAS CITY	MO	11270	0000241182
WORD	AM	SPARTANBURG	SC	66390	0000241183
KRBQ-FM2	FB	SAN FRANCISCO	CA	137626	0000241184
W289CB	FX	MILWAUKEE	WI	157544	0000241185
WYRD-FM	FM	SPARTANBURG	SC	66400	0000241186
KDGS	FM	ANDOVER	KS	70266	0000241187
WKIS	FM	BOCA RATON	FL	64001	0000241188
KWJJ-FM	FM	PORTLAND	OR	13738	0000241189
WBBM-FM	FM	CHICAGO	IL	9613	0000241190
KZJK	FM	ST. LOUIS PARK	MN	54425	0000241191
WINS-FM	FM	NEW YORK	NY	58579	0000241192
WWL	AM	NEW ORLEANS	LA	34377	0000241193
K248CY	FX	WICHITA	KS	141945	0000241194
KJKK	FM	DALLAS	TX	63779	0000241195
WCMF-FM	FM	ROCHESTER	NY	1905	0000241196
WSFS	FM	MIRAMAR	FL	29567	0000241197
KSEG	FM	SACRAMENTO	CA	11281	0000241198
WMAS-FM	FM	ENFIELD	CT	36543	0000241199

Call Sign	Service	City	State	Facility ID	File Number
KMVK	FM	FORT WORTH	TX	23440	0000241200
WLYF	FM	MIAMI	FL	30827	0000241201
WLMG	FM	NEW ORLEANS	LA	34376	0000241202
KILT-FM	FM	HOUSTON	TX	25439	0000241203
KFTK-FM	FM	FLORISSANT	MO	73890	0000241204
WILK-FM	FM	AVOCA, PA	PA	22666	0000241205
KRTH	FM	LOS ANGELES	CA	28631	0000241206
WWKB	AM	BUFFALO	NY	34383	0000241207
KHMX	FM	HOUSTON	TX	47749	0000241208
KITS-FM2	FB	PLEASANTON	CA	18521	0000241209
KMBZ-FM	FM	KANSAS CITY	KS	2449	0000241210
KDKA-FM	FM	PITTSBURGH	PA	20350	0000241211
KNSS	AM	WICHITA	KS	53152	0000241212
WLKK	FM	WETHERSFIELD TWNSHP	NY	9250	0000241213
WKRZ	FM	FREELAND	PA	34379	0000241214
KHTP	FM	TACOMA	WA	18513	0000241215
KLOL	FM	HOUSTON	TX	35073	0000241216
WWWS	AM	BUFFALO	NY	56104	0000241217
WDCH-FM	FM	BOWIE	MD	72177	0000241218
KMNB	FM	MINNEAPOLIS	MN	9641	0000241219
KFRC-FM1	FB	PLEASANTON	CA	178412	0000241220
KXSN	FM	SAN DIEGO	CA	34589	0000241221
WLMZ-FM	FM	PITTSTON	PA	22925	0000241222
WXYT-FM	FM	DETROIT	MI	9618	0000241223
KXQQ-FM	FM	HENDERSON	NV	12560	0000241224
KXNT	AM	NORTH LAS VEGAS	NV	33068	0000241225
W251CT	FX	SPRINGFIELD	MA	200871	0000241226
KFXX	AM	PORTLAND	OR	57830	0000241227
WBTJ	FM	RICHMOND	VA	74168	0000241228
W297AB	FX	BUFFALO	NY	9253	0000241229
WIAD	FM	BETHESDA	MD	9619	0000241230
WOGL	FM	PHILADELPHIA	PA	9622	0000241231
WVEI	AM	WORCESTER	MA	74466	0000241232
WJMH	FM	REIDSVILLE	NC	40754	0000241233
WWWL	AM	NEW ORLEANS	LA	72959	0000241234
WMXJ	FM	POMPANO BEACH	FL	30840	0000241235
WNVZ	FM	NORFOLK	VA	40755	0000241236
WGGY-FM2	FB	EAST STROUDSBURG	PA	190777	0000241237
KYKY	FM	ST. LOUIS	MO	20358	0000241238
WXBK	FM	NEWARK	NJ	20886	0000241239
K268CS	FX	LAS VEGAS	NV	157046	0000241240
KMLE	FM	CHANDLER	AZ	59965	0000241241
KMTT	AM	VANCOUVER	WA	35033	0000241242

Call Sign	Service	City	State	Facility ID	File Number
WAOK	AM	ATLANTA	GA	63775	0000241243
WBBM	AM	CHICAGO	IL	9631	0000241244
WRXL	FM	RICHMOND	VA	11961	0000241245
WJZ-FM	FM	CATONSVILLE	MD	1916	0000241246
WDAF-FM	FM	LIBERTY	MO	8609	0000241247
WNCX	FM	CLEVELAND	OH	41390	0000241248
WRXR-FM	FM	ROSSVILLE	GA	72375	0000241249
KVIL	FM	HIGHLAND PARK-DALLAS	TX	28624	0000241250
KALV-FM	FM	PHOENIX	AZ	63913	0000241251
KNRK	FM	CAMAS	WA	51213	0000241252
KLLC	FM	SAN FRANCISCO	CA	9624	0000241253
WRCH	FM	NEW BRITAIN	CT	1910	0000241254
WBEN	AM	BUFFALO	NY	34381	0000241255
KXFG	FM	MENIFEE	CA	63912	0000241256
KRLD	AM	DALLAS	TX	59820	0000241257
WJZ	AM	BALTIMORE	MD	28636	0000241258
WWMX	FM	BALTIMORE	MD	74196	0000241259
KKWF	FM	SEATTLE	WA	6367	0000241260
KKHH	FM	HOUSTON	TX	25449	0000241261
KQKS	FM	LAKEWOOD	CO	35574	0000241262
WHLL	AM	SPRINGFIELD	MA	36545	0000241263
WKBU	FM	NEW ORLEANS	LA	52434	0000241264
WTIC-FM	FM	HARTFORD	CT	66465	0000241265
WMFS	AM	MEMPHIS	TN	34374	0000241266
WPXY-FM	FM	ROCHESTER	NY	53966	0000241267
WEEI-FM	FM	LAWRENCE	MA	1919	0000241268
KEYN-FM	FM	WICHITA	KS	53151	0000241269
WBZZ	FM	NEW KENSINGTON	PA	20351	0000241270
K240EL	FX	AUSTIN	TX	156299	0000241271
WQAM	AM	MIAMI	FL	64002	0000241272
KSWD	FM	SEATTLE	WA	20356	0000241273
WTIC	AM	HARTFORD	CT	66464	0000241274
WSMW	FM	GREENSBORO	NC	71272	0000241275
KYXY	FM	SAN DIEGO	CA	51671	0000241276
KOOL-FM	FM	PHOENIX	AZ	13506	0000241277
WRNL	AM	RICHMOND	VA	11960	0000241278
KILT	AM	HOUSTON	TX	25440	0000241279
WWJ	AM	DETROIT	MI	9621	0000241280
WJFK	AM	MORNINGSIDE	MD	28638	0000241281
KROQ-FM	FM	PASADENA	CA	28622	0000241282
WXSS	FM	WAUWATOSA	WI	27031	0000241283
WOMC	FM	DETROIT	MI	28623	0000241284
WAXY	AM	SOUTH MIAMI	FL	30837	0000241285

Call Sign	Service	City	State	Facility ID	File Number
KTWV	FM	LOS ANGELES	CA	25437	0000241286
WKTK	FM	CRYSTAL RIVER	FL	18520	0000241287
W241AP	FX	MIDLOTHIAN	VA	139538	0000241288
WOCL	FM	DELAND	FL	10138	0000241289
WMJX	FM	BOSTON	MA	25052	0000241290
KYW	AM	PHILADELPHIA	PA	25441	0000241291
KNX-FM	FM	LOS ANGELES	CA	25075	0000241292
WSCR	AM	CHICAGO	IL	25445	0000241293
WIP-FM	FM	PHILADELPHIA	PA	28628	0000241294
KWFN-FM1	FB	LA JOLLA	CA	203647	0000241295
WWDE-FM	FM	HAMPTON	VA	40753	0000241296
WROC	AM	ROCHESTER	NY	71205	0000241297
KKMJ-FM	FM	AUSTIN	TX	66489	0000241298
KUDL	FM	SACRAMENTO	CA	57889	0000241299
KAMP	AM	AURORA	CO	67843	0000241300
WFAN-FM	FM	NEW YORK	NY	67846	0000241301
WWL-FM	FM	KENNER	LA	52435	0000241302
KWFN-FM3	FB	SAN MARCOS	CA	203665	0000241303
WEZB	FM	NEW ORLEANS	LA	20346	0000241304
WMYX-FM	FM	MILWAUKEE	WI	27029	0000241305
KBZT	FM	SAN DIEGO	CA	58816	0000241306
WZMX	FM	HARTFORD	CT	1900	0000241307
WTPT	FM	FOREST CITY	NC	4677	0000241308
WLND	FM	SIGNAL MOUNTAIN	TN	72371	0000241309
WPAW	FM	WINSTON-SALEM	NC	40752	0000241310
WMHX	FM	WAUNAKEE	WI	73655	0000241311
KDKA	AM	PITTSBURGH	PA	25443	0000241312
KSFM	FM	WOODLAND	CA	59598	0000241313
KCBS	AM	SAN FRANCISCO	CA	9637	0000241314
W239BF	FX	ROCHESTER	NY	157394	0000241315
KRBZ	FM	KANSAS CITY	MO	57119	0000241316
WTDY-FM	FM	PHILADELPHIA	PA	51434	0000241317
KQMT	FM	DENVER	CO	26929	0000241318
WBEE-FM	FM	ROCHESTER	NY	71206	0000241319
WTVR-FM	FM	RICHMOND	VA	54387	0000241320
WJFK-FM	FM	MANASSAS	VA	28625	0000241321
WPOW	FM	MIAMI	FL	73893	0000241322
WFAN	AM	NEW YORK	NY	28617	0000241323
WQMP	FM	DAYTONA BEACH	FL	73137	0000241324
KWOD	AM	KANSAS CITY	KS	87143	0000241325
KFBZ	FM	HAYSVILLE	KS	53153	0000241326
WGGY	FM	SCRANTON	PA	36202	0000241327
WMMM-FM	FM	VERONA	WI	73663	0000241328

Call Sign	Service	City	State	Facility ID	File Number
WILK	AM	WILKES-BARRE	PA	34380	0000241329
WMFS-FM	FM	BARTLETT	TN	4653	0000241330
WRVQ	FM	RICHMOND	VA	11963	0000241331

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Audacy License, LLC, as Debtor-in-Possession (Assignor) and Audacy License, LLC (Assignee) Application for Consent to Assignment of Licenses,* Memorandum Opinion and Order, Application File Nos. 0000241074 et al.

In this decision, we approve the assignment of licenses held by Audacy, which has been under the control of a bankruptcy court, to the new Audacy, so that the company can emerge from bankruptcy proceedings. The process we use to facilitate this license transfer is identical to the one recently used by the agency in the bankruptcy proceedings of Cumulus Media in 2018, iHeart Media in 2019, Liberman Television in 2019, Fusion Connect in 2019, Windstream Holdings in 2020, America-CV Station Group in 2021, and Alpha Media in 2021. To suggest otherwise is cynical and wrong, as this precedent clearly demonstrates. Our practice here and in these prior cases is designed to facilitate the prompt and orderly emergence from bankruptcy of a company that is a licensee under the Communications Act.

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *In the Matter of Audacy License, LLC, as Debtor-in-Possession (Assignor) and Audacy License, LLC (Assignee) Application for Consent to Assignment of Licenses,* Memorandum Opinion and Order, Application File Nos. 0000241074 et al.

The Commission's decision today is unprecedented. Never before has the Commission voted to approve the transfer of a broadcast license—let alone the transfer of broadcast licenses for over 200 radio stations across more than 40 markets—without following the requirements and procedures codified in federal law.[1] Not once. And yet the Commission breaks this new ground today without seeking public comment on altering our established regulations, without actually changing the rules on the books, and without seeking the feedback of other federal agencies with relevant equities.

Let's start with black letter law. Section 310(b) of the Communications Act requires the FCC to review foreign investment in broadcast licenses.[2] Specifically, Congress provided in Section 310(b)(4) that no broadcast radio license shall be granted to any corporation that has more than 25 percent foreign investment if the FCC determines that the public interest would be served by refusing to approve the license transfer.[3] Historically, Section 310(b)(4)'s 25 percent benchmark operated as a *de facto* cap on foreign ownership in the broadcast context. But that changed during the 2010s.

In 2015, through a Commission vote, we sought comment on establishing a process for reviewing and approving license transfers to corporations with excessive foreign ownership—meaning, ownership in excess of Section 310(b)(4)'s statutory benchmark.[4] Back then, the Commission issued a Notice of Proposed Rulemaking,[5] it proposed the text of specific rules,[6] it published a summary of those proposals in the Federal Register,[7] and it sought public comment over the course of nearly an entire year. Importantly, during that rulemaking, the Commission solicited input from the relevant Executive Branch agencies known as "Team Telecom," which are responsible for reviewing excessive foreign ownership of FCC licensees for national security and related policy concerns. Then, in 2016, the Commission adopted an order that codified in federal law one and only one mechanism for the FCC to review and approve the acquisition of broadcast licenses by corporations with excessive foreign ownership.[8]

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[1] *See* 47 C.F.R. § 1.5000(a)(1).

[2] 47 U.S.C. § 310(b).

[3] 47 U.S.C. § 310(b) & (b)(4) ("No broadcast . . . 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.").

[4] *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 (2015).

[5] *Id*.

[6] *Id*.

[7] *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees*, 80 Fed. Reg. 68815-68833 (2015).

[8] *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272 (2016) ("*2016 Foreign Ownership Oder*") (adopting 47 C.F.R. § 1.5000(a)(1)).

That one mechanism requires applicants to go through a specific petition for declaratory ruling process. First, the Code of Federal Regulations expressly states that, in cases involving excessive foreign ownership, licensees "shall file the petition for declaratory ruling required by this paragraph *at the same time* that it files its application."[9] Second, the Code of Federal Regulations provides that the petitioner must also "obtain . . . approval, *before* the aggregate foreign ownership" exceeds the 25 percent benchmark.[10] Third, the Code of Federal Regulations and the Commission's own decisions flesh out the petition for declaratory ruling process itself. In particular, the petition for declaratory ruling enables the Executive Branch's Team Telecom agencies to review the transaction and advise the Commission of any national security, law enforcement, foreign policy, or trade policy concerns.[11] The Executive Branch's Team Telecom review process historically could take in the neighborhood of six months.[12]

So far, so good. Federal law requires applicants with excessive foreign ownership to file a petition for declaratory ruling at the same time that they seek FCC approval for the relevant license transfers, they must then complete that process before the FCC can approve the assignment of licenses, and that process must enable Executive Branch agencies with national security and specific policy expertise to weigh in.[13]

But in this case, the Applicants decided that they did not need to comply with any of those legal requirements. The Applicants expressly state in their filings that they will have foreign investment in excess of Section 310(b)(4)'s 25 percent benchmark. Did they file the petition for declaratory ruling required by the Code of Federal Regulations? No, they did not. Did they obtain approval from the FCC for their excessive foreign ownership? No, they did not. Did the Applicants afford the Executive Branch agencies with national security and relevant policy expertise an opportunity to consider their application as well as the source and amount of foreign investment? No, they did not.

The Commission has never done this before. So why are we voting for a first-ever fast track today?

For their part, the Applicants argue that they should be able to skip the FCC's regular review process because, in their view, subordinate components of the agency previously waived the rules in a few specific cases. As a threshold matter, though, many of the cited decisions did not involve any waiver of FCC rules.[14] But putting aside whether or not those bureau-level decisions are on all fours, the

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[9] 47 C.F.R. § 1.5000(a)(1) (emphasis added).

[10] *Id.* (emphasis added).

[11] *See, e.g.*, *2016 Foreign Ownership Oder*, 31 FCC Rcd at 11273.

[12] *See generally Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd. 13164 (2020) (adopting process reforms for the Team Telecom review).

[13] After we codified this declaratory ruling framework in 2016, the Commission adopted orders in 2020 and 2021 that spelled out the information that any petition must include, and the Commission established a shot clock for the Team Telecom review. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Second Report and Order, 36 FCC Rcd 14848 (2021); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927 (2020).

[14] *See, e.g.,* Order at para. 21 & n.48 (citing *Cumulus Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB 2018); *iHeart Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 34 FCC Rcd 2409 (MB 2019)).

Applicants' reliance on them is misplaced for a more fundamental reason. It is hornbook law that staff-level decisions (whether they complied with federal law or not) do not set precedent for the Commission.[15] So the Applicants' argument here only takes us back to the original starting point. Confronted with an issue of first impression, should we, the Commission, require the Applicants to follow the rules on the books or should the Commission vote, for the first time ever, to create a novel exception to those rules?

I think we should require the Applicants to follow our rules. Indeed, the Applicants make no compelling argument to the contrary. In fact, they make no real showing at all. The Applicants simply assert that following the established rules would imperil their quick emergence from bankruptcy. But that argument cannot be squared with the chronology in this case. The Applicants sought Commission approval for their license transfer over six months ago. There is no reason to think that the federal government could not have completed the normal review process by or around this time. And plainly, the restructuring has not been imperiled by the FCC's six-month consideration of this Application. So their one argument—that they do not have time to follow the law—comes up short.

But these are not my only concerns. The FCC's decision today rests on several additional errors that warrant reversal on appeal. For one, the decision cannot be squared with the agency's current approach to transaction reviews. For instance, in the Standard General-TEGNA proceeding, the agency found that it could not approve the requested license transfers because the applicants in that case failed to persuade the agency that they would not layoff or cut newsroom and other jobs.[16] Under *Goose v. Gander*,[17] the FCC must ding these Applicants for the same reason.[18] Indeed, the Applicants in this case have made no jobs showing or commitment at all. If job losses are relevant to the FCC's transaction review analysis, then the agency cannot approve this takeover.

For another, and related reason, both the Commission and the Applicants have failed to rebut record evidence on this exact point. The record here shows that concerns have been raised about the Applicants cutting jobs once they take the reins at these more than 200 radio stations.[19] But neither the Commission nor the Applicants offer any response. This is plain error meriting reversal on reconsideration or appeal.[20]

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[15] *See, e.g.*, *Comcast Corp. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) ("[A] long line of cases in this circuit . . . unambiguously holds that an agency is not bound by unchallenged staff decisions. As we stated in a recent case, '[t]here is no authority for the proposition that a lower component of a government agency may bind the decision making of the highest level.'") (quoting *Cmty. Care Foundation v. Thompson*, 318 F.3d 219, 227 (D.C. Cir. 2003)).

[16] *Consent to Transfer Control of Certain Subsidiaries of TEGNA, Inc., et al.*, Hearing Designation Order, MB Docket No. 22-162, DA 23-149, at paras. 36-44 (MB Feb. 24, 2023).

[17] *See generally* Merriam-Webster.com, Dictionary, "What's good for the goose is good for the gander" (idiom, meaning "one person or situation should be treated the same way that another person or situation is treated").

[18] *CEI v. FCC*, 970 F.3d 372, (D.C. Cir. 2020) ("We have further held that the FCC can have an 'opportunity to pass' on a question even if the party seeking judicial review never raised it with the agency. . . . The FCC has such an opportunity . . . when a dissenting Commissioner raises the issue.") (citing *ICO Glob. Commc'ns (Holdings) Ltd. v. FCC,* 428 F.3d 264, 269 (D.C. Cir. 2005)).

[19] *See, e.g.*, Media Research Center, Memorandum in Support of Petition to Deny, Audacy License, LLC Debtor-in-Possession to Audacy, LLC, Lead File No. 0000241074 (July 30, 2024) ("And there is reason for concerns about this Soros-backed entity and job losses") (citing Thalia Beaty, *George Soros' Open Society Foundations to Lay Off 40% of Staff Under Son's New Leadership*, Associated Press (July 6, 2023)).

[20] *See, e.g.*, *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 42-43 (1983) (agency action that fails to respond to relevant arguments or does not consider key aspects of the issue will be turned aside as arbitrary and capricious).

For still another, the Communications Act expressly requires applicants in cases like these to demonstrate that the public interest would be served by granting the requested license transfer.[21] But the Applicants in this case have apparently failed to make that showing. Indeed, the Commission decision granting this license transfer contains no public interest analysis specific to this transaction. To be sure, the analysis section dismisses concerns raised in a petition to deny and some related filings, and the analysis section resolves the Applicants' request for a waiver of FCC rules. But the analysis section of the Commission's decision is devoid of any findings or showings that the public interest would be served by granting this request.

For yet another still, the Applicants provide the Commission with virtually no information at all about their plans to wall off the unvetted foreign interests. How can the Commission be sure that those interests will be isolated for the time being when today's decision offers no specifics about those protections? Indeed, the Commission does not even indicate that it knows how much foreign investment is at issue or its source.

To be clear, I am sympathetic to the need for licensees to emerge quickly from bankruptcy, and I agree that there are public interests reasons for moving through the restructuring process without undue delay. That is why I would vote for a rulemaking proceeding that examines how the agency might create a process to accomplish that while complying with the statute and considering the equities of the Team Telecom agencies. The Commission has had several opportunities to create a new process in the years since we adopted our 2016 rules, including in our 2020 and 2021 rulemaking orders.[22] But despite multiple opportunities to do so, at no point did the Commission itself consider, let alone adopt, a special rule that allows us to expedite, relax, or defer the necessary national-security and related policy reviews for licensees going through bankruptcy.

Unless and until the Commission changes our rules, I cannot support the special shortcut adopted today. Accordingly, I dissent.

[21] 47 U.S.C. § 310(d); *see also* 47 U.S.C. § 309.

[22] *See supra* note 13.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *In the Matter of Audacy License, LLC, as Debtor-in-Possession (Assignor) and Audacy License, LLC (Assignee) Application for Consent to Assignment of Licenses,* Memorandum Opinion and Order, Application File Nos. 0000241074 et al.

We have before us an item that would have flummoxed the Commission of just two years ago. It involves a full reorganization (involving the cancellation of $1.6B of debt) of one of the largest broadcast media companies in America—ultimately transferring control to entities tied to a well-known private equity mogul, implicating foreign ownership and attributable interests in other, potentially affiliated broadcast companies.

Sound familiar?

But the Commission of today has apparently learned its lesson, and is ready to rock and roll to get blockbuster media deals back on track! (Provided, naturally, that they are the right *sorts* of deals involving the right *sorts* of owners.)

I won't labor overlong on comparing and contrasting this transaction with any other. Instead, let's discuss process. Initially, Commission leadership directed bureau staff to handle the transaction themselves, as befits the Commission's maximalist turn in delegated authority. The first time that any of my colleagues had a chance to review an item was on Friday, August 9th, 2024 (the Friday after the August Open Meeting, which, by custom, inaugurates the Commission's unofficial "summer recess"), with the bureau informing Commissioners that the item would be released Monday. No vote. No meaningful opportunity to review.

Suffice it to say, that did not sit well with me.

I was pleased when Senator Cruz requested that the item be brought for a full Commission vote, and I was delighted when it was. Now that I've had a chance to review the item, I have questions.

Don't get me wrong: I prefer when deals get done. I think we are all better off when broadcast asset valuation doesn't crater like an Apollo asteroid impact. But *because* of our impoverished process, there is *very* little record here to support the hand-waving conclusions that the item draws. While there are more, let me select just three issues to highlight.

First: the item, in a single sentence, finds it in the public interest to extend to the applicant a previously-granted waiver of our local radio ownership rules in the Kansas City market. Shoot, that seems okay, in principle, with me. In fact, a single, conclusory sentence finding that our local broadcast ownership limits can be exceeded without any particular import for the public interest (or, indeed, perhaps even *improvement to* the public interest) is my jam. Yet when this Commission recently has considered single-station exceedance of local market ownership in media mergers and acquisitions, it has, until just now, warranted a searching bureau inquiry, months of delay, and a great deal of apprehension. Here: a sentence. Hm. I guess, under *these* particular circumstances, the Commission is not, as Gen Z says, "keeping that same energy." Odd.

Second: the applicant provides that the reorganized Audacy will be controlled in Laurel Tree Opportunities Corporation. LTOC will own and control a majority of the voting stock of the reorganized Audacy. Who controls LTOC? It's not a particularly complicated structure: Fund for Policy Reform. And who controls FPR? Well, Google it.

What else does FPR control (or, put another way: what else do those who control FPR control)? Well, a whole bunch of things, left as an exercise for the reader. But one salient thing in FPR's media toolkit is its attributable debt interest in the Latino Media Network, *another* radio conglomerate. Now, the combination of attributable interests here, again, *might* not bother me, had I an opportunity to review a fulsome factual record in the public interest pursuant to Section 310(d). In fact, I can imagine only few scenarios where that *would* bother me. Yet: I can imagine a few. And, since I am voting on a skeletal item citing essentially no factual record that was yanked at the last minute from a contemplated 48-hour notice fast-track, imagination is what I have.

Third: the item grants the applicant a waiver of Section 1.5000(a)(1) of our rules, which otherwise require that an applicant for a broadcast license to seek and obtain a declaratory ruling that foreign ownership interests in the license-holding entity do not exceed 25% in the aggregate before the grant of a license. When a waiver of this rule is granted for entities emerging from bankruptcy, it is typically conditioned on the resulting license holder filing a petition for a declaratory ruling within 30 days of consummation of the assignment of the license permitting it to exceed the foreign ownership limits. As the applicant admits, the resulting entity in this case will have greater than 25% of attributable foreign ownership. Typically, and here, foreign holders will, in the interim and pending final action on the petition, be assigned special warrants without voting rights to represent their interests.

The item gets one thing right: the Commission has, in the past and at the bureau level, granted waiver of this rule to permit issuance of warrants with a final determination on the propriety of foreign ownership held in abeyance. Yet, of course, we review each transaction for public interest, so to speak, *de novo*. What is the public interest assessment here? From the item:

> We find that consistent with our policy to accommodate the federal bankruptcy process where possible, and based on the particular facts presented here, the use of special warrants proposed by the Applicant and a temporary waiver of section 1.5000(a)(1) will facilitate the prompt emergence of Audacy DIP from bankruptcy, providing the benefits the Applicant describes while maintaining the required review of the proposed foreign ownership, and will thus serve the public interest.

That's it. That's the public interest assessment. When I read "based on the particular facts presented here," I could not help but imagine the music of summer evening cricketsong.

At any rate: to my recollection, I have never voted for the waiver of Section 1.5000(a)(1). I am considering it for the first time. The argument typically goes: "Look, the Commission and Team Telecom *are* going to do this review, just later. The public interest is served by permitting license holders to exit bankruptcy reorganizations quickly and get back on the air. If there are issues with foreign ownership, we can and will deal with them later."

I have two thoughts.

First, I just have to point out: a Commission eager to fast-track a billion dollar broadcast media reorganization, disregarding foreign ownership concerns, is the same Commission that has gone back to the well several times to impose and re-impose foreign sponsorship identification rules on our smallest independent broadcast license holders every time they place local church content on the air. Just saying.

Second, I can see two scenarios in which I would vote for such a waiver. For instance, suppose the assignee (to say nothing of the bankrupt assignor, which definitionally has few resources) were actually resource-constrained. A comparatively small assignee might benefit from a "fast-track" on the question of foreign ownership, because it permits the assignee to quickly deploy *limited* resources back into on-the-air operations. While I am not prepared at this time to suggest a bright line definition of a

"small assignee" would be, here the question is obviously moot. Or consider another scenario, where I and my colleagues on the Commission are invited by Commission leadership, the bureau, or parties to the transaction to review the record. To ask questions. To participate. And to do so from an early moment. I might have been able to learn something about the transaction, and therefore faithfully to discharge my obligation, recently reaffirmed in Congressional correspondence, to act fairly and objectively as it relates to grants and transfers of licenses.

It is trivial that fair and objective judgment is rooted in an opportunity to discover facts, yet I was afforded none. The first outreach I received about this transaction, the application for which has been pending before the Commission since March, was when I was informed by bureau staff in August that: thanks but no thanks, they would handle it for me. And now that I have been afforded an opportunity to weigh in, I have no meaningful record to review, and consequently no way to determine if grant of the Section 1.5000(a)(1) waiver, or the Application overall, serves the public interest.

I have no choice but to dissent.

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

In the Matter of	)	
	)	
Access to Video Conferencing	)	CG Docket No. 23-161
	)	
Implementation of Sections 716 and 717 of the Communications Act of 1934, as enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010	)	CG Docket No. 10-213
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Petition of Sorenson Communications, LLC for Limited Waiver of the Privacy Screen Rule	)	

SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 26, 2024 **Released: September 27, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

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I. INTRODUCTION

1. In this *Second Report and Order*, we take steps to ensure that people with disabilities are able to access and use video conferencing, a modern communications tool that is critical in connecting for work, education, health, and other fundamental life activities.[1] We provide additional clarity on how existing accessibility performance objectives in Part 14 of our rules apply to interoperable video conferencing services (IVCS).[2] We also modify those performance objectives to ensure access to IVCS. Finally, we modify our rules for telecommunications relay services (TRS) to address how the Interstate TRS Fund will support the provision of Video Relay Service (VRS) and other forms of TRS in video conferences.[3] Regarding TRS calls in general, we authorize TRS Fund support for multiple TRS communications assistants (CAs), when warranted, on a single call.

2. In the *Further Notice of Proposed Rulemaking*, we seek comment on adopting additional amendments to our rules to further ensure the accessibility of video conferencing, including potential amendments to the Part 14 rules to provide additional specificity on user control of IVCS accessibility features and to address IVCS accessibility for individuals with vision, cognitive, and mobility disabilities. We also seek comment on whether additional changes are needed in our Part 64 rules to facilitate the provision of TRS in video conferences and protect the TRS Fund from waste, fraud, and abuse in this context.

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[1] *See 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, and 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, 38 FCC Rcd 6300 (2023) (*2023 Video Conferencing Order*, *Notice*, or *Privacy Screen Waiver Order*).

[2] *See* 47 CFR Pt. 14.

[3] *See id*. Pt. 64.

II. BACKGROUND

A. Application of Accessibility Rules to Video Conferencing

3. Under section 716 of the Communications Act, as amended (the Act),[4] added by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),[5] providers of ACS and manufacturers of equipment used for advanced communications services (ACS) must make such services and equipment accessible to and usable by people with disabilities, if achievable.[6] Service providers and manufacturers may comply with section 716 of the Act either by building accessibility features into their services and equipment[7] or by choosing to use third-party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that are available to individuals with disabilities at nominal cost.[8] If accessibility is not achievable through either of these means, then manufacturers and service providers must make their products and services compatible with existing peripheral devices or specialized CPE commonly used by people with disabilities to achieve access, subject to the achievability criterion.[9] The Commission is directed to adopt "performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for such services."[10]

4. The Act defines "advanced communications services" as:

> interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; (D) interoperable video conferencing service; and (E) any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.[11]

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[4] 47 U.S.C. § 617.

[5] Pub. Law 111-260, 124 Stat. 2751 (Oct. 8, 2010).

[6] 47 U.S.C. § 617(a)(1), (b)(1); 47 CFR § 14.10(b) (defining "achievable").

[7] 47 U.S.C. § 617(a)(2)(A), (b)(2)(A).

[8] *Id*. § 617(a)(2)(B), (b)(2)(B). By contrast, section 255 of the Act, which requires that providers of telecommunications service and manufacturers of telecommunications and customer premises equipment ensure that their services and equipment are accessible to and usable by people with disabilities, if readily achievable, does not include a provision allowing service providers and equipment manufacturers to choose to meet their obligations by using third-party applications or equipment. *Id*. § 255.

[9] *Id.* § 617(c). ACS providers and equipment manufacturers are also subject to recordkeeping and reporting requirements established pursuant to section 717(a) of the Act. *Id*. § 618(a); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14650-55, paras. 219-30 (2011) (*2011 ACS Order* or *2011 ACS Further Notice*). For example, providers and manufacturers must maintain records of their efforts to ensure that their services and products are accessible (47 CFR § 14.31(a)), and must be prepared to demonstrate due diligence in exploring accessibility and achievability in response to complaints (*id*. § 14.36(a)).

[10] 47 U.S.C. § 617(e)(1)(A).

[11] *Id.* § 153(1).

"Interoperable video conferencing service," in turn, is defined as:

> A service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.[12]

5. In initially adopting rules to implement section 716, the Commission incorporated without change the statutory definition of "interoperable video conferencing service,"[13] but it also attempted to determine what Congress meant by including the word "interoperable" as part of the term.[14] Finding that the record before it was insufficient to decide this question, the Commission sought further comment on the issue.[15]

6. The extent to which section 716 applies to video conferencing remained undecided for many years. In that period, video conferencing technology evolved substantially and its use increased. After the onset of the COVID-19 pandemic, the growth of video conferencing accelerated, to the point that it became recognized as a central pillar of our communications infrastructure.[16] Concomitantly with its growth came heightened concerns about its accessibility to people with disabilities.[17] In the 2022 Biennial Report to Congress required by the CVAA,[18] while recognizing that some accessibility features had been introduced by some video conferencing platforms, the Commission noted numerous examples of video conferencing platforms' lack of accessibility, as described by commenters on the draft Biennial Report, including the following:

- Automatic captioning producing incomplete or delayed transcriptions, causing cognitive overload;
- Screen reader incompatibility with platforms' chat features and user screen sharing;
- Difficulty toggling sound and mute features for people with vision disabilities, as well as lack of access to verbosity settings that allow users to control when notifications are voiced;
- Difficulty with enlarging content or viewing two windows at once;
- Poor video quality hindering sign language communication; and
- Audio-only workarounds during system crashes and low-bandwidth situations not adequately serving people who are deaf and hard of hearing.[19]

7. In June 2023, after refreshing the record on the definition of "interoperable video conferencing service,"[20] the Commission resolved the definitional issue, revisiting its previously stated

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[12] *Id.* § 153(27).

[13] *2011 ACS Order*, 26 FCC Rcd at 14709, Appx. B; 47 CFR § 14.10(m).

[14] *2011 ACS Order*, 26 FCC Rcd at 14576-77, paras. 46-47.

[15] *2011 ACS Further Notice*, 26 FCC Rcd at 14684-87, paras. 301-05.

[16] *2023 Video Conferencing Order*, 38 FCC Rcd at 6303-04, paras. 6-7.

[17] *Id.* at 6304-06, paras. 8-11.

[18] *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 37 FCC Rcd 11360 (CGB 2022) (*2022 CVAA Report to Congress*).

[19] *Id.* at 11370-72, paras. 23-27.

[20] *See Consumer and Governmental Affairs, Media, And Wireless Telecommunications Bureaus Seek Update On Commission's Fulfillment of The Twenty-First Century Communications and Video Accessibility Act*, GN Docket No. 21-140, Public Notice, 36 FCC Rcd 7108, 7109 (2021) (*2021 CVAA Refresh Public Notice*); *Consumer and Governmental Affairs Bureau Seeks to Refresh* the *Record on Interoperable Video Conferencing Services*, CG Docket No. 10-213, Public Notice, 37 FCC Rcd 5647, 5651 (CGB 2022) (*2022 IVCS Refresh Public Notice*).

views regarding the interpretation of this statutory term.[21] Noting that the Act specifically defines "interoperable video conferencing service" as "a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing,"[22] the Commission found no persuasive reason to modify or limit the scope of the statutory definition. Therefore, the Commission concluded that its Part 14 accessibility rules apply to all services and equipment that "provid[e] real-time video communications, including audio, to enable users to share information of the user's choosing."[23] Given the extended pendency of questions regarding the application of Part 14 to video conferencing, the Commission recognized that some service providers might need additional time to comply with those rules, and therefore allowed IVCS providers one year from the effective date of the *2023 Video Conferencing Order* to come into compliance with the existing Part 14 rules.[24]

B. TRS and Video Conferencing

8. Enacted in 1990, Title IV of the Americans With Disabilities Act (ADA), codified as section 225 of the Act, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner," to people in the United States with hearing or speech disabilities.[25] TRS are defined as "telephone transmission services" enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services."[26] There are currently three forms of Internet-based TRS: (1) Video Relay Service (VRS) "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment;"[27] (2) Internet Protocol Relay Service (IP Relay) allows an individual with a hearing or speech disability to communicate with voice telephone users by transmitting text via the Internet;[28] and (3) Internet Protocol Captioned Telephone Service (IP CTS) permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[29] The provision of Internet-based TRS is

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[21] *2023 Video Conferencing Order*, 38 FCC Rcd at 6312-15, paras. 27-33.

[22] *Id.* at 6313, para. 28.

[23] *Id.*; *see* 47 U.S.C. § 153(27).

[24] *See 2023 Video Conferencing Order*, 38 FCC Rcd at 6317-18, para. 41. IVCS providers were required to comply with the Part 14 accessibility rules no later than September 3, 2024. *See Consumer and Governmental Affairs Bureau Announces Compliance and Comment Dates for the Interoperable Video Conferencing Services Proceeding*, CG Docket Nos. 03-123, 10-213, and 23-161, Public Notice, 38 FCC Rcd 6778, 6778 (CGB 2023) (*2023 Video Conferencing Effective Date Public Notice*).

[25] 47 U.S.C. § 225(b)(1).

[26] *Id.* § 225(a)(3).

[27] 47 CFR § 64.601(a)(51); *see also Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011) (*2011 VRS Call Practices Order*).

[28] 47 CFR § 64.601(a)(24). The text transmission is delivered to an IP Relay call center, where a CA converts the user's text to speech for the hearing party and converts that party's speech to text for the IP Relay user. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7780, para. 3 (2002) (*2002 IP Relay Declaratory Ruling*).

[29] 47 CFR § 64.601(a)(23); *see Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 385, para. 14 (2007) (*2007 IP CTS Declaratory Ruling*).

supported by the Interstate TRS Fund, maintained through mandatory contributions from providers of telecommunications service, interconnected VoIP service, and non-interconnected VoIP service.[30]

9. The structure of the Commission's TRS program reflects the fact that, historically, most people have used wireline or wireless telephone networks to communicate remotely by voice. Thus, North American Numbering Plan (NANP) telephone numbers are used to route calls between TRS users and the people they are calling, and the provision of TRS, to date, has typically been configured to fit within the typical structure of a traditional telephone call, with a "calling party" and "called party" and originating and terminating NANP numbers. This structure has continued to be used to frame the provision of TRS even after the development of Internet-based forms of TRS. For example, VRS, which requires an Internet video link between VRS user and CA, has been configured to fit the traditional framework in which one party places a call to another party (or parties, in the case of a conference call) by dialing a phone number.[31] The other "leg" of an ordinary VRS call is simply a voice connection between the CA and the hearing party (or parties), using ordinary telephone service. As a result, even though a VRS user's connection with a CA is established via an Internet video link, the Commission has been able to rely on originating and terminating telephone numbers as part of the information required to verify the user's eligibility and the minutes of service for which TRS providers are compensated.[32]

10. Video conferencing, however, is generally accessed through the Internet, without necessarily involving any telephone numbers. While a consumer can obtain audio-only access to some video conferences by dialing a telephone number, full video access is usually achieved directly through the Internet, without the use of originating or terminating telephone numbers. As a result, for a consumer to use VRS to participate in a video conference (absent the new arrangements discussed in this *Second Report and Order*), a telephone number must be available for an audio-only connection to the video conference. The VRS consumer must (1) establish a direct video connection to the conference—in the same way as other participants, but independently of the VRS provider—and (2) establish a second, separate video connection to the VRS provider. The CA then establishes a separate, audio-only connection to the conference, using the dial-in number. The CA's only connection to the VRS user is via the second video connection. Thus, the CA cannot see the other video conference participants, and the VRS user can only view the CA over the second video connection, often on a separate screen.

11. To address concerns about the availability of TRS on video conferencing platforms, the Commission requested the Disability Advisory Committee (DAC) to study the matter. In its 2022 report, the DAC stated:

> It is impossible for users of most video conferencing platforms and most TRS providers to natively interconnect their preferred TRS provider to video conferencing platforms. Typically, TRS users can only interconnect their preferred TRS provider to a video conferencing

[30] 47 CFR § 64.604(c)(5)(iii)(A). Three non-Internet-based forms of TRS—traditional TRS using text telephony (TTY), Captioned Telephone Service (CTS), and Speech-to-Speech Relay (STS)—are also supported in part by the TRS Fund and are available through state TRS programs.

[31] In 2008, to enable VRS to function more like traditional telephone service, the Commission required that VRS users be assigned NANP telephone numbers, which can be dialed to reach a VRS user, and to maintain those numbers (with associated Internet routing information) in a TRS Numbering Directory, to facilitate the routing of calls between Internet-based TRS users and end users served by other service providers. 47 CFR § 64.613; *see also Telecommunications Relay Services And Speech-to-Speech Services For Individuals With Hearing And Speech Disabilities, E911 Requirements For IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008).

[32] *See* 47 CFR § 64.611(a)(4) (requiring telephone numbers for registration in the User Database for VRS and IP Relay), (j)(2) (same for IP CTS); *id.* § 64.604(c)(5)(iii)(D)(2) (requiring telephone numbers in call data records).

> platform by dialing in via the public switched telephone network (PSTN).[33]

12. Such a dial-in connection is often unavailable,[34] and even when available, dialing into a video conference poses multiple difficulties.[35] First, the TRS provider's CA, who is connected to the video conference via the audio-only dial-in connection, has no visual access to the video conference participants (including visual cues to indicate who is speaking) as well as any documents or other visual aids being shown to participants.[36] Second, as Communications Equality Advocates (CEA)[37] explains, these arrangements:

> essentially force a participant using TRS to deal with the hassle of running two applications (to wit, two windows) on the same device or juggling two devices during the conference, one to participate in the video portion of the conference, and another to communicate with the TRS provider's [CA]. As anyone who has participated in a video conference—particularly with a large group—knows, following the discussion is challenging enough with one application or one device; having to toggle between two applications or two devices makes meaningful participation even more arduous.[38]

13. For all these reasons, the DAC recommended that the FCC resolve these issues by:

- Facilitating a technical mechanism for TRS providers to natively interconnect TRS services, including video, audio, captioning, and text-based relay to video conferencing platforms;
- Ensuring that users can seamlessly initiate TRS from the provider of their choice on any video conferencing platform;
- Addressing the integration of CAs and the overall accessibility challenges of video conferencing platforms; and,
- Clarifying the legal ability of TRS providers to seek compensation for service provided for video conferences from the TRS Fund.[39]

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[33] Recommendation of the Federal Communications Commission (FCC) Disability Advisory Committee (DAC) on Telecommunications Relay Service (TRS) Use on Video Conferencing Platforms at 2 (Feb. 24, 2022), https://www.fcc.gov/file/22912/download (DAC Video Conferencing Report). Since the DAC recommendations were published, one VRS provider has reported that it now offers a means of integrating its provision of VRS with one video conferencing platform. *See* Letter from John T. Nakahata, Counsel to Sorenson Communications, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed Mar. 10, 2023).

[34] DAC Video Conferencing Report at 2.

[35] *Id.* at 3-4.

[36] *See*, *e.g.*, Comments of Sorenson Communications, LLC, at 7-8 (filed Sept. 6, 2023) (Sorenson Comments). Further, the CA's audio-only connection may result in poor audio quality, causing errors in interpretation or captioning. DAC Video Conferencing Report at 4.

[37] CEA is a coalition of advocacy organizations for the deaf and hard of hearing, comprising the National Association of the Deaf (NAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Communication Service for the Deaf (CSD), TDIforAccess, Inc. (TDI), accesSOS, Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), Deaf In Government (DIG), Association of Late-Deafened Adults (ALDA), Global Alliance of Speech-to-Text Captioning, National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH), Cerebral Palsy and Deaf Organization (CPADO), and Registry of Interpreters for the Deaf (RID).

[38] Comments of Communications Equality Advocates on Notice of Proposed Rulemaking, at 8 (filed Sept. 6, 2023) (CEA Comments).

[39] DAC Video Conferencing Report at 4-5.

C. 2023 Notice of Proposed Rulemaking

14. On June 12, 2023, the Commission released a *Notice* proposing (1) IVCS-specific amendments to the performance objectives in the Part 14 rules on accessibility of ACS and (2) amendments to the TRS rules to authorize and facilitate the provision of TRS in video conferences. Specifically, the Commission proposed to require IVCS providers to include speech-to-text (*i.e.*, captioning of all voice communications) and text-to-speech capability,[40] to enable the use of sign language interpreting,[41] and to include accessibility settings in the user interface controls.[42] The Commission also sought comment on whether technical standards are available or could be fashioned for use as safe harbors, whereby certain performance objectives for IVCS can be satisfied by providing access to relevant forms of TRS.[43]

15. Regarding its TRS rules, the Commission proposed to clarify that the integrated provision of TRS in video conferences can be supported by the Interstate TRS Fund.[44] The Commission also proposed additional rule amendments specific to video conferences, addressing (1) VRS user validation and call detail supporting compensation requests;[45] (2) participation of VRS CAs and the use of multiple CAs and multiple VRS providers;[46] and (3) the ability of VRS users and CAs to turn off their cameras when not actively participating in a video conference.[47] Regarding TRS generally, the Commission proposed to amend the confidentiality requirements for TRS CAs and providers in the context of video conferences[48] and prohibit exclusivity agreements between TRS providers and IVCS providers.[49] Finally, the Commission sought comment on how to avoid TRS substituting for accommodations for individuals with disabilities that employers, educational institutions, health care organizations, and government agencies are required to provide under other applicable laws,[50] including whether to allow TRS users to reserve a CA in advance of a video conference.[51]

16. In response to the *Notice,* the Commission received comments from a broad range of industry and consumer representatives: a task force composed of a consortium of constituents with disabilities,[52] three advocacy organizations for the blind;[53] two communications industry trade

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[40] *Notice,* 38 FCC Rcd at 6320-22, paras. 48-54.

[41] *Id.* at 6322-24, paras. 55-57.

[42] *Id.* at 6324, paras. 58-59.

[43] *Id.* at 6326, paras. 65-67; 47 U.S.C. § 617(e)(1)(D).

[44] *Notice,* 38 FCC Rcd at 6326-28, paras. 68-73.

[45] *Id.* at 6329-30, paras. 77-80.

[46] *Id.* at 6330-32, paras. 81-86.

[47] *Id.* at 6332, paras. 87-89. The Commission also sought comment on whether rule changes were needed to address the integration of other forms of TRS into video conferences. *Id.* at 6332-34, paras. 90-94.

[48] *Id*. at 6334-35, paras. 96-98.

[49] *Id.* at 6335, para. 99.

[50] *Id.* at 6335-36, paras. 100-01.

[51] *Id.* at 6336, para. 102.

[52] Comments of the Consortium of Constituents with Disabilities (CCD) Technology and Telecommunications (Tech) Task Force (filed Sept. 6, 2023) (CCD-TTTF Comments).

[53] Comments of: American Council of the Blind (ACB Comments); American Foundation for the Blind (AFB Comments); National Federation of the Blind (NFB Comments) (all filed Sept. 6, 2023).

organizations;[54] two VRS providers;[55] two IP CTS providers;[56] two ASL technology or interpreting organizations;[57] two accessibility consulting firms;[58] CEA; one consumer privacy advocate;[59] one assistive technology firm supporting individuals with speech disabilities;[60] one state relay service program;[61] the People's Republic of China;[62] and several dozen "express comments" from individual commenters. Reply comments were filed by the coalition of advocacy organizations for the deaf and hard of hearing,[63] two VRS providers,[64] one IP Relay provider,[65] one industry trade organization,[66] one state public utility commission,[67] and one ASL technology organization.[68] Subsequently, Sorenson Communications, LLC (Sorenson) a VRS provider that developed a mechanism to allow use of VRS on one video conferencing platform, requested clarification of the existing TRS rules with respect to the integrated provision of VRS in video conferences.[69]

III. SECOND REPORT AND ORDER

17. In this *Second Report and Order*, we adopt new or modified objectives to improve the accessibility and usability of video conferencing services for individuals with disabilities. In addition, we amend Part 64 of our rules to expressly authorize the provision of TRS with video conferencing and to

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[54] Comments of USTelecom—The Broadband Association (filed Sept. 6, 2023) (USTelecom Comments); Comments of Consumer Technology Association (filed Sept. 6, 2023) (CTA Comments).

[55] Sorenson Comments; Comments of Convo Communications, LLC (filed Sept. 6, 2023) (Convo Comments).

[56] Comments of Hamilton Relay, Inc. (filed Sept. 6, 2023) (Hamilton Comments); ClearCaptions, LLC Comments (filed Sept. 6, 2023) (ClearCaptions Comments).

[57] Comments of Sign-Speak Inc. (filed Sept. 6, 2023) (Sign-Speak Comments); Comments of LanguageLine Solutions (filed Sept. 6, 2023) (LanguageLine Comments).

[58] Comments of Marc Safman, Safman Consulting (filed Aug. 11, 2023) (Safman Comments); Comments of Matthew Kaplowitz, Bridge Multimedia (filed Aug. 29, 2023) (Bridge Comments).

[59] Comments of Electronic Privacy Information Center (filed Sept. 6, 2023 (EPIC Comments).

[60] Comments of Voiceitt, Inc. (filed Sept. 6, 2023) (Voiceitt Comments).

[61] Letter from David Bahar, Director, Telecommunications Access of Maryland, to Marlene H. Dortch, Secretary, FCC (filed Sept. 6, 2023) (Maryland Relay Comments).

[62] Comments from P.R. China on United States Notification G/TBT/N/USA 2029: Access to Video Programming (filed Oct. 5, 2023) (PRC Comments).

[63] Reply Comments of Communications Equality Associates on Notice of Proposed Rulemaking (filed Oct. 6, 2023) (CEA Reply Comments).

[64] Reply Comments of Sorenson Communications, LLC (filed Oct. 6 2023) (Sorenson Reply Comments); Reply Comments of ZP Better Together, LLC (filed Oct. 6, 2023) (ZP Reply Comments).

[65] T-Mobile Accessibility Reply Comments (filed Oct. 6, 2023) (T-Mobile Reply Comments).

[66] Reply Comments of Consumer Technology Association (filed Oct. 6, 2023) (CTA Reply Comments).

[67] Letter from Lisa-Marie G. Clark, Staff Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-213, and 23-161 (filed Oct. 6, 2023) (CPUC Reply Comments).

[68] Reply Comments of Sign-Speak Inc. on Notice of Proposed Rulemaking (filed Oct. 6, 2023) (Sign-Speak Reply Comments).

[69] *See* Letter from John T. Nakahata, Counsel to Sorenson Communications, to Alejandro Roark, Chief, CGB, and Mark Stephens, Chief, OMD, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123 (filed Oct. 19, 2023) (Sorenson Request Letter); Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123 (filed Oct. 16, 2023) (Sorenson October 2023 *Ex Parte*); Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123 (filed Jan. 25, 2024) (Sorenson Jan. 25 *Ex Parte*).

define how providers of TRS Fund-supported VRS and other relay services may integrate the provision of TRS with video conferencing.

A. Video Conferencing Accessibility

1. Need for Improvement

18. We find that there is a continuing need for improvement in making video conferencing accessible. Commenters generally agree with the Commission's assessment that video conferencing has grown from a niche product to an essential vehicle of communication.[70] As CEA points out, "consumer-grade video conferencing services, unheard of when the CVAA was passed, are now an everyday communications tool used in every aspect of our personal, educational, and business lives."[71] Sorenson concurs, noting: "Day-to-day activities—such as work meetings, parent-teacher conferences, family gatherings, and social hangouts—predominantly shifted from traditional telephone calls and audio conference bridges to [video conferencing] platforms during the COVID-19 pandemic."[72] According to other commenters, video conferencing services "have become the preferred platforms for discourse throughout the country,"[73] and their use "is required for many employees and contractors to maintain productivity at the workplace."[74]

19. Video conferencing has become a routine facet of everyday life. Recent data from Gallup show that, as of February 2024, only 20% of U.S. employees with remote-capable jobs work exclusively on-site (compared to 60% in January 2019); 54% have hybrid work arrangements, and 27% have exclusively remote work arrangements.[75] The Pew Research Center has found that 78% of remote workers use video or online conferencing services at least "sometimes," with more than half using such services "often."[76] Convo Communications, a TRS provider, points out that "[v]ideo conferencing is here to stay as an important component of communications going forward."[77] Similarly, the Consumer Technology Association (CTA) notes that "[g]oing forward, video conferencing and other technologies with accessibility features will continue to be a catalyst for post-COVID economic recovery, opening important employment opportunities for traditionally underserved and underemployed communities."[78] We agree with CEA's assessment of the record: "In short, there is no disagreement among commenters as to the importance of video conferencing services to our everyday lives or the need to improve the accessibility and usability of those services for individuals with disabilities."[79]

20. The record also reflects that there are significant gaps in the accessibility of video conferencing platforms. As the Commission has previously noted, some video conferencing platforms have implemented accessibility features, such as braille display support, captioning, keyboard accessibility features, high-contrast visual elements, customizable notifications, verbosity controls,

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[70] *Notice*, 38 FCC Rcd at 6303-04, para. 67.

[71] CEA Comments at 4.

[72] Sorenson Comments at 5.

[73] T-Mobile Reply Comments at 2.

[74] ZP Reply Comments at 2.

[75] *Indicators: Hybrid Work*, https://www.gallup.com/401384/indicator-hybrid-work.aspx (last visited Aug. 30, 2024).

[76] Ruth Igielnik, *As telework continues for many U.S. workers, no sign of widespread 'Zoom fatigue'* (May 4, 2022), https://www.pewresearch.org/fact-tank/2022/05/04/as-telework-continues-for-many-u-s-workers-no-sign-of-widespread-zoom-fatigue/.

[77] Convo Comments at 3.

[78] CTA Comments at 3.

[79] CEA Reply Comments at 4.

pinning and spotlighting, and support for screen readers.[80] However, even with these advances, challenges remain. Numerous comments from consumers request that we ensure the availability of features and enhancements needed to make video conferences more accessible.[81] The Disability Advisory Committee observed that:

> [S]ome video conferencing platforms incorporate live closed captioning using automatic speech recognition (ASR). However, these solutions are not available for all platforms or on all video conferences for platforms that do provide them. . . . When ASR-based captions are available, they may be of insufficient quality. . . . Some platforms do not allow users to customize caption size, color, opacity, and other critical settings to ensure readability. And some platforms lack sufficient user control to ensure that interpreters and signers are properly displayed and can be properly pinned on users' displays.[82]

21. CEA notes that "often the [video] windows in which speakers and interpreters appear are too small for a viewer to be able to read lips or observe sign language interpreting."[83] And, while some IVCS providers offer captioning, if the video conference host controls the captioning, other users may not be able to adjust the captioning when "the captioning appears too small and lacks adequate contrast against the background to be reasonably legible."[84] Further, consumers can access video conferences from a wide range of Internet-enabled devices, increasing the need for customizing what they see on their screens.[85] However, "[e]ach video conferencing platform uniquely arranges and identifies its controls and settings, which makes it more difficult for unfamiliar users to adjust the settings on their devices for optimal presentation as needed during a video conference."[86]

22. Individuals who are blind or have low vision also report problems accessing video conferences. The National Federation of the Blind (NFB) points out that "[c]reating, hosting, or joining a meeting presents multiple accessibility barriers for members of these communities, regardless of which platform and device combination are utilized."[87] Users who are blind or have low vision may encounter difficulty navigating features, controls, and settings of video conferencing platforms with their preferred

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[80] *2022 CVAA Report to Congress*, 37 FCC Rcd at 11369-70, paras. 22-24; *see also* National Association of the Deaf, "Video Conferencing Platforms Feature Matrix," https://www.nad.org/videoconferencing-platforms-feature-matrix/ (last visited Aug. 30, 2024); CTA Comments at 7.

[81] *See, e.g.,* Express Comments of: Elizabeth Speirs (Sept. 6, 2024) (captioning, spotlighting); Holly Ragar (Sept. 5, 2023) (ASL interpretation); Everette Bacon (Sept. 5, 2023) (screen readers); Gregory Spera (Sept. 3, 2023) (ASL interpretation); Caroline Davis (Aug. 16, 2023) (ASL interpretation); William Harkness (Aug. 9, 2023) (captioning and other features); Kristy Stellato (Aug. 8, 2023) (pinning and other features); *see also* 2024 CVAA Biennial Report Comments of TDIforAccess, Inc., Communication Service for the Deaf, Inc., National Association of the Deaf, Hearing Loss Association of America, and Registry of Interpreters for the Deaf, CG Docket No. 10-213, at 5-6 (discussing lack of essential accessibility features such as captioning, spotlighting, customizable screen layouts, visual descriptions, voice controls, and accessible user interfaces) (May 6, 2024).

[82] DAC Video Conferencing Report at 2-3.

[83] CEA Comments at 7.

[84] *Id.*; *see also* Letter from Karen Peltz Strauss, CSD, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123, at 1 (filed April 30, 2024) (AAO Apr. 30 *Ex Parte*). This letter was submitted on behalf of CSD, TDI, NAD, and HLAA (collectively, the Accessibility Advocacy Organizations (AAO)).

[85] CEA Comments at 9.

[86] *Id.*

[87] NFB Comments at 1.

assistive technology.[88] As a commenter states, "[i]f, for example, certain controls are not operable with assistive technology or are not properly labeled, people who are blind or have low vision are not able to enter, operate, and conclude a call."[89] Furthermore, if control and setting features of the conference platform are purely visual, they may be inaccessible to users who are blind or have low vision.[90]

23. A 2024 study examining the experiences of people with various disabilities when using popular video conferencing platforms reveals additional challenges, particularly for neurodivergent participants or those with physical or motor impairments.[91] For example, some respondents with speech, motor, or cognitive disabilities described being unable to formulate questions or locate and activate a video conferencing platform's "raise your hand" function in time to contribute in calls.[92] Other respondents described being overwhelmed by the need to learn new functions and tools on different video conferencing platforms.[93]

24. As several commenters point out, these concerns are heightened because conference call participants are generally not in a position to dictate what video conferencing platform will be used for a particular conference.[94] For example, a patient who is deaf may not be able to obtain healthcare because the doctor's telehealth conferencing platform does not enable a connection to a sign language interpreter or VRS.[95] Similarly, "[v]isual content shared in the video conferencing platform during a video conference is usually not accessible to people who use screen readers or braille displays because shared documents typically appear only as a flat image without perceivable elements."[96] In these and other scenarios, a person with a disability often has no opportunity to request a different, accessible video conferencing system.

2. Compliance with Existing General Performance Objectives

25. As discussed above, IVCS poses a broad range of accessibility issues, which often require solutions specifically tailored to the multimedia aspect of this subcategory of ACS. Attempts to address these issues were delayed while the Commission's interpretation of the term "interoperable video conferencing service" remained unresolved. The result is a patchwork of different accessibility features from different video conferencing providers, causing a confusing and inconsistent landscape for people with disabilities to navigate.[97] In addition, because IVCS is so often used for pre-scheduled, multi-party

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[88] AFB Comments at 2; ACB Comments at 2.

[89] AFB Comments at 2.

[90] NFB Comments at 1.

[91] Hersh, M., Leporini, B., & Buzzi, M., "A Comparative Study of Disabled People's Experiences With the Video Conferencing Tools Zoom, MS Teams, Google Meet and Skype. *Behaviour & Information Technology*, 1–20 (Jan. 9, 2024), https://doi.org/10.1080/0144929X.2023.228653.

[92] *Id.*

[93] *Id.*

[94] CEA Comments at 9.

[95] *Id.* at 15. A 2024 report from the U.S. Department of Health and Human Services finds that (1) people with disabilities use telehealth more than people without disabilities, and (2) people with disabilities rely on audio rather than video telehealth, suggesting that video telehealth may not always be available or accessible to all individuals with disabilities. Madjid Karimi, Lok Wong Samson *et al.*, "Trends and Disparities in Pandemic Telehealth Use among People with Disabilities," p. 9 (May 14, 2024), https://aspe.hhs.gov/reports/pandemic-telehealth-use-people-disabilities.

[96] AFB Comments at 1; *see also* NFB Comments at 1; ACB Comments at 1-2.

[97] *See, e.g.,* CEA Comments at 6 ("*some* video conferencing services are accessible to *some* people with *some* disabilities in *some* contexts.") (emphases in original).

communication, consumers with disabilities often have no choice as to which service is used for a video conference—that choice is made by the person or organization hosting the video conference.[98]

26. These accessibility gaps can be closed to a substantial extent if IVCS providers and equipment manufacturers comply with the Commission's current rules. Part 14 of those rules, initially adopted in 2011 to implement section 716(e) of the Act, includes a set of "performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for such services."[99] The current performance objectives define, in general terms, what providers of IVCS and manufacturers of equipment used for IVCS must accomplish to make their services, equipment, and software accessible, usable, and compatible.[100] In general, for services, equipment, and software to be "accessible": (1) input, control, and mechanical functions must be "locatable, identifiable, and operable" by people with disabilities; and (2) "[a]ll information necessary to operate and use the product" must be available to people with disabilities.[101] Within this rubric, the provision sets forth a list of performance objectives defining further what "accessible" means for people with specific types of disabilities.[102] For example, one provision states that advanced communications services, equipment, and software shall be "[o]perable without hearing," i.e., shall "[p]rovide at least one mode that does not require user auditory perception."[103] Like other providers of ACS and manufacturers of ACS equipment, IVCS providers and manufacturers are required to meet each of these objectives (unless an objective is not achievable). Pursuant to the *2023 Video Conferencing Order*, IVCS providers were allowed additional time (until September 3, 2024) to comply with these objectives.[104]

27. A number of the accessibility improvements sought by commenters can be addressed by IVCS providers coming into compliance with the existing rules. For example, section 14.21(b)(1) states that, for services, equipment, and software to be accessible to people who are blind, "input" and "control" functions shall be "provided in at least one mode that does not require user vision,"[105] and "all information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels . . ."[106] shall be available "through at least one mode in auditory form." Meeting these

[98] *See id*. at 9.

[99] 47 U.S.C. § 617(e)(1)(A).

[100] *See* 47 CFR § 14.21. In its initial implementation of section 716 of the Act, the Commission recognized that performance objectives should "clearly define the outcome needed to be achieved without specifying how these ends could be accomplished." *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3171-72, para. 105 (2011) (*2011 ACS Notice*). Therefore, the Commission adopted general, outcome-oriented provisions, patterned on the older provisions of Part 6 and Part 7 rules, which apply to telecommunications, voicemail, and interactive menu services and equipment. *2011 ACS Order*, 26 FCC Rcd at 14647, para. 211. The Commission also recognized that performance objectives should be "testable, concrete, and enforceable," *2011 ACS Notice*, 26 FCC Rcd at 3171-72, para. 105 (quoting a comment), but decided to defer consideration of more specific performance criteria pending further developments. *2011 ACS Order*, 26 FCC Rcd at 14647-48, para. 212; *see also id*. at 14563, para. 10.

[101] 47 CFR § 14.21(b).

[102] *Id*. Other performance objectives define "usable" and "compatible." *Id*. § 14.21(c), (d).

[103] *Id*. § 14.21(b)(1)(iv).

[104] *See 2023 Video Conferencing Order*, 38 FCC Rcd at 6317-18, para. 41; *2023 Video Conferencing Effective Date Public Notice*, 38 FCC Rcd at 6778.

[105] 47 CFR § 14.21(b)(1)(i).

[106] *Id.* § 14.21(b)(2).

performance objectives (e.g., by providing, among other things, voice-activated control settings and screen-reader functionality or compatibility) would address AFB's concerns that chat functions and control settings on IVCS platforms are often visual only, and thus inaccessible to blind and low-vision users.[107] As of September 3, 2024, IVCS providers should have rolled out updates to address such deficiencies, if achievable.

28. Additionally, section 14.21(b)(2) states that in at least one mode, ACS shall permit operation by, and provide visual information to, people with "visual acuity between 20/70 and 20/200, without relying on audio."[108] Meeting this objective through, *e.g.*, magnification, high-contrast, and color inversion options, as well as compatibility with third-party refreshable braille displays, would be important steps toward making IVCS platforms accessible to low-vision and deafblind users.[109]

29. Similarly, compliance with the existing rules could substantially reduce accessibility gaps faced by people with cognitive and mobility disabilities. Section 14.21(b)(1) specifies that, to be accessible, advanced communications services and equipment must have modes that are operable with limited manual dexterity, and with limited reach and strength, without requiring body contact or close body proximity, and without time-dependent controls,[110] and "at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user."[111] Steps that providers could take to implement these requirements include providing voice- or gesture-based controls, one-button shortcuts, an "easy-to-use" setting, and other features.

30. In the *Further Notice*, we seek additional comment on whether the performance objectives described above need further modification to ensure the accessibility of IVCS.

3. Need for IVCS-Specific Performance Objectives

31. While accessibility gaps in IVCS can be addressed to some extent by implementing the performance objectives of our current rules, the record makes clear that, in a number of areas, more specific guidance is needed to promote accessibility in the IVCS context. For example, captions are an obvious means for IVCS providers to implement the existing performance objective specifying that ACS "[p]rovide auditory information through at least one mode in visual form,"[112] and many IVCS platforms offer ASR-generated captioning. However, the record indicates that captions are often inaccurate, too small, or difficult to turn on and manipulate.[113] As AAO explains:

> IVCS platforms vary considerably with respect to the ability to activate and effectively use automated captions. Users are often at a loss as to how to turn on captions and frequently are unable to position and otherwise manipulate captions, which is necessary for optimal viewing. For example, on some platforms the captions have been too small for effective reading. Other platforms fail to ensure a sufficient level of

[107] AFB Comments at 2.

[108] 47 CFR § 14.21(b)(2)(ii).

[109] *See* AFB Comments at 2.

[110] 47 CFR § 14.21(b)(1)(v)-(viii).

[111] *Id.* § 14.21(b)(1)(x).

[112] *Id.* § 14.21(b)(2)(iv). *Cf. id.* § 79.1(a)(2) (defining "[c]losed captioning, or captioning" as "[t]he *visual display of the audio portion* of video programming pursuant to the technical specifications set forth in this part") (emphasis added).

[113] *See, e.g.*, AAO Apr. 30 *Ex Parte* at 1.

> captioning quality, resulting in excessive errors that make it difficult to follow the dialogue.[114]

In addition, some accessibility concerns are not directly addressed at all by the current rules. For example, none of the existing performance objectives requires IVCS platforms to facilitate the use of sign language and sign language interpretation—a key omission for a medium inherently suited to sign language communication. Therefore, we amend Part 14 of our rules as discussed below, to define more specifically the objectives that IVCS providers must meet to achieve accessibility and promote more consistency in their implementation, thereby enabling people with disabilities to participate in video conferences whenever accessibility is achievable.[115]

32. These outcome-oriented[116] performance objectives maintain incentives and opportunities for innovative design in this rapidly developing industry sector[117] and avoid straying into the prohibited territory of mandatory technical standards.[118] Consistent with section 716 of the Act,[119] these performance objectives will allow IVCS providers to choose whether to satisfy their accessibility obligations by building certain features directly into their applications or by "using third party applications, peripheral devices, software, hardware, or CPE that is available to the consumer at nominal cost and that individuals

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[114] *Id*.

[115] In its comments, the People's Republic of China recommends that the Commission make the performance objectives optional, contending that mandatory requirements would "impose significant cost burdens on businesses and impact the overall cost for the general public." PRC Comments at 3. The comments do not elaborate on what these costs might be. We reiterate that Part 14 performance objectives are subject to the caveat that compliance is not required if the performance objective is not "achievable"—a criterion that is defined in terms of "reasonable effort or expense." 47 CFR § 14.10(b). However, while entities may petition for waiver of the performance objectives, the CVAA did not grant the Commission authority to make ACS performance objectives optional. *See* 47 U.S.C. § 617(e)(1)(A) ("In prescribing implementing regulations, the Commission . . . shall include performance objectives to ensure the accessibility, usability, and compatibility of [ACS]."); *id*. § 617(a)(1), (b)(1) (stating that equipment manufacturers and service providers shall ensure that covered equipment and services shall be accessible to and usable by individuals with disabilities, unless these requirements are not achievable). The repeated use of the word "shall" in these provisions denotes that they are mandatory, not permissive requirements.

[116] *See 2011 ACS Notice*, 26 FCC Rcd at 3171-72, para. 105 (agreeing with "the broad range of commenters who stress the importance of having performance objectives that would clearly define the outcome needed to be achieved without specifying how these ends should be accomplished"). Thus, we find inapposite the People's Republic of China's concern that the proposed performance objectives do not include reference standards or compliance procedures. *See* PRC Comments at 3. This is by design, and is true of all the performance objectives in Part 14. As noted earlier, section 716 of the Act expressly requires the Commission to allow flexibility in the implementation of accessibility objectives and precludes us from imposing mandatory technical standards. 47 U.S.C. § 617(a)(2), (e)(1)(D).

[117] *See*, *e.g.*, CTA Comments at 10 (cautioning against "assumptions about user needs and preferences that would lock in user interface designs and video conferencing capabilities that would ultimately stifle innovation"). We share CTA's general concern, and on this basis reject some commenters' recommendations for more granular performance objectives. However, as discussed further below, we do not agree that the performance objectives adopted herein would have these adverse effects.

[118] 47 U.S.C. § 617(e)(1)(D) (providing that the Commission shall not mandate technical standards, except as a safe harbor if necessary to facilitate compliance); *see also* CTA Reply Comments at 4 (cautioning that "certain proposals appear to be so burdensome and granular that they would rise to the level of unlawful technical mandates and otherwise make business and design decisions solely for compliance rather than to benefit consumers."); *id*. at 5 ("Many of the proposals in the record are equivalent to technical mandates that would force innovators into confined design choices.").

[119] 47 U.S.C. § 617(b)(2).

with disabilities can access."[120] In addition, the new performance objectives are subject to the achievability criterion,[121] as well as the special exemption and waiver provisions of the ACS rules.[122]

33. Just as the existing Part 14 performance objectives apply both to advanced communications services and to equipment and software used with ACS,[123] the performance objectives we adopt for specific application for IVCS also apply to equipment and software used for IVCS. Manufacturers of equipment used for IVCS must ensure that such equipment, as well as software components of such equipment,[124] meet these new and modified objectives, unless that is not achievable.

34. *Timing of Commission Action*. Given the critical importance of access to video conferencing for people with disabilities, we find no cause for further delay in providing specific guidance on the necessary steps to make video conferencing accessible. Where the adoption of a proposed rule is supported by the record, we find no persuasive reason to defer its adoption, as some commenters urge, pending an assessment of what has been achieved during the extended compliance period[125] or the outcome of potential collaboration among stakeholders.[126] As CEA points out, even if some issues may require additional time to resolve, "implementation of new performance objectives can begin while fact-finding and deliberation over more complex policy and operational issues proceeds on a parallel track."[127] Similarly, although we encourage collaboration among stakeholders to further improve the accessibility of features and functions of video conferencing services, we see no reason to delay the adoption of more specific performance objectives while waiting for such collaboration to bear fruit. The record reflects consensus both that video conferencing has become a ubiquitous and critical part of daily life and that video conferencing accessibility remains a work in progress. The untenable result is that people with disabilities are unable to participate fully in what is now a routine mode of communication. Given the centrality of video conferencing in modern American society, and that 14 years have passed since Congress mandated the accessibility of IVCS, video conferences should be made accessible as soon as it is achievable to do so.

35. However, we recognize that bringing accessibility to video conferencing may pose some technical challenges, especially for smaller IVCS providers. It may also require substantial interaction with other parties, including TRS providers and the disability community. Therefore, we do not require compliance with the Part 14 rules adopted in this *Second Report and Order* until two years after the effective date.

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[120] *Id.* § 617(b)(2)(B). "Nominal cost" means that "any fee for third-party software or hardware accessibility solutions [shall] be 'small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.'" *2011 ACS Order*, 26 FCC Rcd at 14621, para. 152.

[121] 47 U.S.C. § 617(a)(1), (b)(1); 47 CFR § 14.20; *see also id*. § 14.10(b) (defining "achievable").

[122] 47 CFR § 14.3 (exemption for customized equipment or services); *id*. § 14.5 (waivers for multipurpose services and equipment).

[123] *Id.* § 14.1(a).

[124] *See 2011 ACS Order*, 26 FCC Rcd at 14585-86, para. 69.

[125] CTA Comments at 2.

[126] *See id*. at 2-4; CTA Reply Comments at 2 (asserting that "additional stakeholder dialogue to determine needs, preferences and feasibility are critical to ensuring that the Commission only adopts those requirements that can address consumer needs effectively").

[127] CEA Comments at 7.

4. IVCS Performance Objectives

a. Captions

36. *Background*. Section 14.21(b)(2)(iv) of the Commission's rules sets forth the performance objective that ACS shall "[p]rovide auditory information through at least one mode in visual form and, where appropriate, in tactile form."[128] In the *Notice*, the Commission proposed to amend section 14.21(b)(2)(iv) of its rules to specify that IVCS "provide at least one mode with captions that are accurate and synchronous"[129] and sought comment on whether to specify that IVCS enable the use of alternative captioning methods.[130]

37. *Comments*. CEA generally supports the Commission's proposal, while urging that it be expanded to also require that "human-generated captioning (CART) services" be available to users on request.[131] Regarding caption quality, CTA cautions that it can be affected by factors outside an IVCS provider's control and that "AI caption technologies have technical limitations that cannot be eliminated without innovation."[132] CTA also contends that a benchmark based on the standard for captioned telephone service provides insufficient clarity as to the applicable standard.[133] Noting that third-party access to IVCS necessarily implicates interoperability and security concerns, CTA argues that requiring such access "would lock in user interface designs and video conferencing capabilities in ways that would ultimately stifle innovation."[134]

38. *Discussion*. We modify Rule 14.21(b)(2)(iv) to read:

> *Availability of auditory information*. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form. For interoperable video conferencing services, provide at least one mode with captions that accurately and synchronously display the spoken communications in a video conference, and enable users to connect with third-party captioning services so that captions provided by such services appear on the requesting user's video conference screen. In this paragraph (iv):
>
> (A) *Accurately* means that captioning matches the spoken words of a conversation, in the order spoken, verbatim, without summarizing or paraphrasing, sufficiently to enable a user to understand what is being said.
>
> (B) *Synchronously* means that, to the greatest extent possible, the captions begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end, are delivered fast enough to keep up with the speed of those words and sounds, and remain displayed long enough to be read by the user.

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[128] 47 CFR § 14.21(b)(2)(iv).

[129] *Notice*, 38 FCC Rcd at 6321, para. 50.

[130] *Id.* at 6322, para. 53.

[131] CEA Comments at 20.

[132] CTA Comments at 9.

[133] *Id.* at 10.

[134] *Id.*

This amendment directly addresses one of the most broadly impactful and persistent accessibility issues concerning video conferences, *i.e.*, the inconsistent availability of accurate captions across video conferencing providers.[135] The record is clear that captions play a crucial role in allowing people who are deaf or hard of hearing to be fully engaged in a video conference conversation. As a coalition of accessibility advocacy organizations explains, for people who are deaf or hard of hearing, "a lack of captions can make meaningful interaction impossible."[136] While the existing rule already makes clear that captioning (the provision of "auditory information . . . in visual form") is necessary for accessibility, it does not address the quality of captions. Therefore, to provide additional guidance, we amend the rule as shown above.

39. As modified, the performance objective states that captions must be accurate and synchronous.[137] We do not include the language proposed in the *Notice* stating that caption quality must be "comparable to that provided on TRS Fund-supported captioned telephone services."[138] As multiple commenters noted, our rules do not currently provide quantitative standards to measure accuracy or latency in the IP CTS context.[139] Pending further development of quantitative measures, we limit this performance objective to a qualitative standard, similar to the qualitative standards currently applicable to IP CTS and live television programming. We define "accurate," to mean that captioning matches the spoken words of a conversation, in the order spoken, verbatim, without summarizing or paraphrasing.[140] Given that IVCS, like IP CTS or live video programming, involves real-time communication without advance scripting, 100% error-free captioning may not always be achievable. However, captioning should be sufficiently accurate to enable a user to understand what is being said.[141] We define "synchronous" to mean that captions must coincide with the corresponding spoken words and sounds to

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[135] One of the major recommendations in the DAC's Video Conferencing Report was the inclusion of "built-in closed captioning functionality that is available to all users… ." *See* DAC Video Conferencing Report at 6. Additionally, CEA made "integrated, automated closed captioning" the first item in their list of proposed performance objectives. CEA Comments at 20.

[136] Accessibility Advocacy and Research Organizations (AARO) 2022 IVCS Refresh Comments at 8 (filed July 18, 2022).

[137] While we recognize that captioning placement is also important for accessibility, most videoconferencing platforms meet this need by placing the captions on top or bottom outside the window with meeting participants' video screens, or by making such captions relocatable by participants.

[138] *See Notice*, 38 FCC Rcd at 6321, para. 50.

[139] *See*, *e.g.*, CTA Comments at 10; CEA Comments at 16-17; Sorenson Comments at 17; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, DA 24-49, para. 16 n.52 (CGB Jan. 17, 2024) ("[T]he Commission's minimum TRS standards do not currently include quantitative metrics.").

[140] *See* 47 CFR § 64.604(a)(2)(ii) (TRS CAs "must relay all conversation verbatim" unless the user requests summarization); *id*. § 79.1(j)(2)(i) ("Captioning shall match the spoken words (or song lyrics when provided on the audio track) in their original language (English or Spanish), in the order spoken, without substituting words for proper names and places, and without paraphrasing, except to the extent that paraphrasing is necessary to resolve any time constraints.").

[141] *See Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2250, para. 42 (2014) (*CC Quality Order*) (acknowledging that 100% accuracy is not possible with live captioning, and stating that the overall object is to ensure accessibility, and that complaints will be considered, on a case-by-case basis, to assess overall understandability and accuracy). Similarly, implementation of this performance objective will be evaluated on a case-by-case basis, considering overall understandability and accuracy, the ability of the captions to convey the aural content of the call in a manner equivalent to the aural communication, and the extent to which captioning errors made the video conference inaccessible. *Cf. id.*

the greatest extent possible,[142] be delivered fast enough to keep up with the speed of those words and sounds, and remain displayed long enough to be read by the user.[143] In other words, to the greatest extent possible, the captions should begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end.[144] Captions must be sufficiently synchronous to enable a user to participate in real-time in a conversation among video conference participants. While a quantitative standard may be preferable, we reject CTA's contention that a qualitative standard provides insufficient notice regarding the quality required, given that analogous qualitative standards are already in place for video programming and TRS.[145]

40. *Third-Party Captioning Services*. As modified, the performance objective also specifies that IVCS enable users to connect with third-party captioning services and enable the display of such captions on the requesting party's video conference screen. In some instances, participants in video conferences may prefer a third-party captioning service, which may provide a higher degree of accuracy than can be achieved by using the IVCS provider's native captioning.[146] Or a video conference host may be legally obligated to provide (and pay for) captioning service for a video conference that poses specific captioning challenges.[147] As the Disability Advisory Committee explains, some video conferencing services struggle to integrate third-party captioning services into their conference calls.[148] In some cases, users must open a separate web browser or application to view captions, forcing them to split their attention between two screens (if a second screen is even available to the user).[149] If deaf and hard of hearing participants are forced to split their attention between multiple screens, or multiple devices, it often will be difficult to follow the visual conversation on one screen while simultaneously reading the captions on another.[150]

41. To address these problems, the amended performance objective provides that IVCS shall enable users to connect with such third-party accommodations services, such that the captions provided by third parties are viewable on the user's video conference screen, rather than on a separate screen.[151] In

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[142] *Cf. id*. at 2243-44, para. 30.

[143] *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388-89, para. 22 & n.69 (Captions must be delivered "fast enough so that they keep up with the speed of the other party's speech."); 47 CFR § 79.1(j)(2)(ii) ("Captions shall be displayed on the screen at a speed that permits them to be read by viewers.").

[144] *See CC Quality Order*, 29 FCC Rcd at 2243, para. 30.

[145] CTA Comments at 10. Regarding CTA's concerns about factors outside a provider's control affecting caption quality, we note that the obligation to meet this performance objective, like all Part 14 performance objectives, is qualified by the criterion of achievability.

[146] *See* CEA Comments at 20 (asserting that "automated captioning has a higher error rate than human-generated captioning" and that "users should have the option of human-generated captioning services in lieu of ASR"); Angie L. Fuoco, Express Comment (Sept. 6, 2023) ("Please require the use of live captioners, because ASR isn't up to the standards of human captioners."). As noted in the text below, this performance objective does not differentiate between human-generated and ASR-generated captions.

[147] *See Notice*, 38 FCC Rcd at 6321-22, para. 52.

[148] DAC Video Conferencing Report at 3; AAO Apr. 30 *Ex Parte* at 1-2 ("A more seamless process is needed to streamline the integration of CART services on IVCS calls.").

[149] DAC Video Conferencing Report at 3.

[150] *See id.* at 6.

[151] We do not prohibit IVCS providers from affording participants the option to view captions on a separate screen, which may be preferable in some instances to accommodate certain disabilities, peripheral devices, or accessibility software.

other words, to be accessible, IVCS must enable a user[152] to view on-screen the display of captioning provided by a third party.

42. Although some commenters focus on a need to access human captioners,[153] we do not limit the kinds of third-party captioning services that may be accessed by IVCS users. Consistent with the technology-neutral, outcome-oriented nature of performance objectives, the rule does not differentiate between captioning generated with human involvement and captions created entirely with automatic speech recognition technology.

43. We also note that the requirement to enable third-party captioning does not require an IVCS provider to ensure that third-party captioning is available to users at no or nominal cost—unless the IVCS provider is relying on a third party to fulfill its primary captioning obligation.[154] Similarly, if an IVCS provider is not relying on a third party to fulfill its primary captioning obligation, the IVCS provider is not responsible for ensuring that captions provided by a third party are accurate and synchronous, except to the extent of its obligation to not impair or impede accessibility.[155]

44. *Access to IP CTS*. One commenter urges the Commission to require video conferencing providers to integrate with IP CTS providers, suggesting that IVCS providers will not be able to offer captioning services equal in quality to IP CTS.[156] IP CTS is one type of third-party captioning service. Accordingly, the performance objective we adopt requires that IVCS providers provide a mechanism for conference hosts and users to connect with an IP CTS provider, if that is their preference, unless the capability for such connection is not achievable.[157]

b. Sign Language Interpreting

45. *Background*. To ensure that video conferences are accessible to users who communicate in sign language, the Commission proposed to adopt a new performance objective providing that IVCS "enable the use of sign language interpretation, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language communication."[158]

46. *Comments*. CEA generally supports the Commission's proposal, while suggesting that it be broadened to include other forms of TRS and to specify the provision of "appropriate sizing features to

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[152] This *Second Report and Order* uses the terms "user" and "participant" or "call participant" interchangeably to refer to anyone that is present in a given video conference. This includes the parties to the call as well as CAs and the call's host, if there is one.

[153] *See*, *e.g.*, CEA Reply Comments at 13 ("Users should also have the option to choose between ASR and live human captioning."); Jonathan Paul Katz, Express Comment (filed Sept. 6, 2023) ("It would be helpful to require both automated captioning and the ability to link to human captioning."); Angie L. Fuoco, Express Comment (filed Sept. 6, 2023) ("Please require ease and possibility of using live human captioners for all video conferencing platforms. . . . ASR captions are not up to the standards of human captioners by any means in 2023.").

[154] *See* 47 U.S.C. § 617(b)(2)(B) (allowing ACS providers the flexibility to fulfill their accessibility obligations by "using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access").

[155] *See* 47 CFR § 14.20(a)(4)-(5).

[156] *See* ClearCaptions Comments at 4-5 (IVCS providers should be required to integrate with TRS providers).

[157] We also note that this performance objective does not dictate the specifics of any technical interface or "lock in user interface designs." CTA Comments at 10. In particular, we do not mandate that an IVCS provider make its connection interface for third parties compatible with any specific technology that may be used by a particular captioning service or IP CTS provider.

[158] *Notice*, 38 FCC Rcd at 6323, para. 56.

enable users to fully see and comprehend [sign language] interpreters."[159] CTA raises the same interoperability and security concerns described above regarding captioning, as well as the claim that requiring such access would stifle innovation.[160]

47. *Discussion*. We adopt the proposed performance objective with a few modifications:

> 14.21(b)(4) In addition to the other requirements of this section, interoperable video conferencing services and covered equipment and software used with such services shall:
>
> (i) Enable the use of sign language interpretation provided by third parties, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language communication.

This performance objective provides that accessibility for IVCS includes enabling a video connection for sign language interpreters, so that they can view and be viewed by users of these services.[161] The performance objective is modified to make clear its applicability to both IVCS itself and to equipment and software used for IVCS. For additional clarity, the proposed rule is modified by inserting the words "provided by third parties" after "enable the use of sign language interpretation."[162]

48. This performance objective does not differentiate regarding the type of sign language service that may be offered by a third party. We anticipate that most sign language users who participate in video conferences will be using American Sign Language (ASL). However, this performance objective is intended to apply broadly to all forms of visual language commonly in use by people with disabilities. For example, Cued English uses hand shapes, hand placements, and non-manual signals on the mouth to provide a transliteration of spoken English for some individuals with hearing disabilities.[163] We believe that the same technology that facilitates the inclusion of ASL interpreters is equally applicable to other forms of interpretation or transliteration.

49. We decline, at this time, to modify this performance objective as Sign-Speak proposes: to require IVCS platforms to "provide" sign language interpretation, rather than merely "enable" it.[164] Adopting this recommendation would mean that IVCS providers would need to arrange for sign language

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[159] CEA Comments at 20. A user's ability to adjust the display of video windows in which speakers and signers appear is addressed in Part III.A.3.c.

[160] CTA Comments at 10.

[161] *Notice*, 38 FCC Rcd at 6323, para. 56. In Part III.B below, we also amend our TRS rules to further facilitate the provision of VRS in video conferences on an integrated basis.

[162] This change addresses the concern of the People's Republic of China as to whether a sign language interpretation function must be integrated into an IVCS platform. PRC Comments at 3. The performance objective does not require IVCS providers to *provide* sign language interpretation as part of their services; rather, it specifies that an IVCS provider shall enable users to access sign language interpretation services provided by others.

[163] *See* Letter from Nicole Dugan, National Cued Speech Association, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 21-140 and 10-213 (filed June 2, 2023); AARO 2022 IVCS Refresh Comments at 20-21 (urging the Commission to "mandate the inclusion of essential accessibility features . . . including the appearance of cued language transliterators").

[164] *See* Sign-Speak Comments; Sign-Speak Reply Comments at 5-7. Sign-Speak contends that the rule "must be crafted so that ASL interpretation and English Captioning have *functional equivalency* within IVCS platforms." Sign-Speak Reply Comments at 5 (emphasis in original). The Commission's goal in the TRS context to devise accessibility requirements that will allow individuals with disabilities to have a communication experience that is functionally equivalent to the experience of those without such disabilities. We do not require different accessibility tools to be equal to each other.

interpreting to be available to users at all times and would be responsible for the quality of the service provided. The record is insufficient for us to assess this proposal, which likely would be implemented through automatic sign language interpretation software, akin to automatic speech recognition. We seek further comment on this proposal in the *Further Notice*.

50. *Video Quality*. Although we do not mandate a particular level of video quality, the quality must be sufficient to allow users to see and understand interpreters' signing, and for users' own sign language to be seen and understood by interpreters and others.[165] We do not anticipate—and the record does not indicate—that this criterion will pose any undue burden on video conferencing providers. Video quality is a fundamental component of a competitive video conferencing product. Providers are therefore independently motivated to provide high-quality video.

c. User Interface Controls

51. *Background*. To implement the Disability Advisory Committee's recommendation that the Commission ensure users' ability "to control the activation and customize the appearance of captions and video interpreters,"[166] the Commission sought comment on adopting a new performance objective providing that IVCS provide user interface control functions that permit users to adjust the display of captions, speakers, and signers and other features for which user interface control is necessary for accessibility.[167]

52. *Comments*. CEA generally supports the Commission's proposal, while urging that it specify in greater detail the particular accessibility-related features that IVCS users need to be able to control.[168] AFB recommends that the performance objective specify the ability of users who are blind to control the "verbosity" of the on-screen information conveyed by a screen reader.[169] CTA contends that some proposals for user interface controls are "so burdensome and granular" as to be "unlawful technical mandates" that "would force innovators into confined design choices."[170]

53. *Discussion*. To ensure that accessibility features can be adjusted to address the specific needs of individual users and the various circumstances in which IVCS may be used, we adopt the performance objective set forth in the *Notice*, with modifications:[171]

> 14.21(b)(4) In addition to the other requirements of this section, interoperable video conferencing services and covered equipment and software used with such services shall:
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> * * *

[165] *Cf.* Access Board, *Section 508 and 225 Guidelines*, § 412.7, https://www.access-board.gov/ict/#412.7 ("Where ICT provides real-time video functionality, the quality of the video shall be sufficient to support communication using sign language.").

[166] DAC Video Conferencing Report at 6.

[167] *Notice*, 38 FCC Rcd at 6324, para. 59.

[168] CEA Comments at 21.

[169] AFB Comments at 2.

[170] CTA Reply Comments at 4, 5; *id*. at 5-6 & n.15 (citing 47 U.S.C. § 617(e)(1)(D)).

[171] The proposed performance objective is modified by adding the words "activate and" before "adjust." This ensures that individual users have the ability to activate, as well as adjust, features such as captions. In addition, the performance objective is modified to make clear its applicability to both IVCS itself and to equipment and software used for IVCS. Finally, we clarify that this performance objective includes participants' ability to edit their display names before or after joining a video conference. *See* Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123, at 2 (filed Sept. 20, 2024) (Sorenson Sept. 20 *Ex Parte*).

> (ii) provide user interface control functions that permit users to activate and adjust the display of captions, speakers, and signers and other features for which user interface control is necessary for accessibility. In this paragraph (ii):
>
> (A) *Adjust the display of captions* means that a video conference participant can alter the size, font, and on-screen location of captions and adjust the color and opacity of both the captions and the caption background.
>
> (B) *Adjust the display of speakers and signers* means that video conference participants can minimize or hide extraneous windows, expand the windows of their choice, or relocate particular windows; and edit their own display names before or after joining a video conference.

54. As CEA explains, "given the wide range of IP-enabled devices that can be used for video conferences, the need for individual users to be able to customize what they see on their screens is critical."[172] However, user controls that allow such customization are frequently unavailable or insufficient.[173] Further, existing ACS performance objectives do not directly address this problem. Although Rule 14.21(b)(1) generally requires that control functions necessary for a user to operate a covered service or product shall be accessible,[174] that performance objective does not expressly address the need for control functions to enable a user, not only to *operate* the service, but to *ensure its accessibility*. Accessibility is not a static condition: to ensure that a video conferencing service is accessible across the wide range of devices that may be used to access it, by users with varying disability-related needs, individual users must themselves be able to manipulate accessibility-related functions.[175] The performance objective we adopt addresses this problem by providing that video conference participants be able to control the activation and settings of accessibility-related features. The text of the new provision reflects that user control is especially important in two areas: captioning and the visual display of speakers and signers.

55. *Captioning*. In its 2022 report, the DAC states that, among the platforms that offer captions, some "do not allow users to customize caption size, color, opacity, and other critical settings to ensure readability."[176] The Accessibility Advocacy Organizations explain further:

> IVCS platforms vary considerably with respect to the ability to activate and effectively use automated captions. Users are often at a loss as to how to turn on captions and frequently are unable to position and

[172] CEA Comments at 9.

[173] *Id*.

[174] 47 CFR § 14.21(b)(1).

[175] *See, e.g.,* Letter from Karen Peltz Strauss on behalf of CSD, HLAA, NAD, and TDI, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-51, and 03-123, at 3 (filed July 23, 2024) (seeking "Accessible user interfaces and non-host dependent control over" all accessibility features); Letter from Zainab Alkebsi, NAD, on behalf on NAD, HLAA, and TDI, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-51, and 03-123, at 2 (filed May 7, 2024) (AAO May 7 *Ex Parte*) ("independent user control over accessibility-related settings…is necessary to empower…individuals to manage their own preferences and needs"); Angie Fuoco, Express Comment (Sept. 6, 2023) (seeking consistent ability across platforms to customize captions for each individual user); Jennifer Schuck, Express Comment (Sept. 5, 2023) (stating that a "user-friendly interface that allows easy control over these services is essential"); Megan L. Speed, Express Comment (Sept. 5, 2023) ("Enhancements to existing assistive features should focus on universal standards for accessibility across platforms to ensure a consistently high-quality service.").

[176] DAC Video Conferencing Report at 3.

> otherwise manipulate captions, which is necessary for optimal viewing. For example, on some platforms the captions have been too small for effective reading.[177]

56. To address these concerns, the performance objective we adopt requires IVCS providers to allow call participants to independently control the activation and display of captions on their individual devices. To the degree achievable, call participants must be able to alter the size, font, and on-screen location of captions and to adjust the color and opacity of both the captions and the caption background.[178] This objective generally aligns with the Commission's requirements in other contexts, particularly with regard to the customizability of captions on digital apparatus.[179]

57. *Display of Speakers and Signers*. The record reveals that additional accessibility challenges arise as the number of participants in a video conference grows. For example, when faced with numerous, undifferentiated video windows, which are automatically enlarged based only on sound cues, it can be extremely challenging to determine when an interpreter (or another sign language user) is signing. A sign language user who loses sight of the interpreter is effectively exiled from the conversation until they regain that visual connection. Ensuring that the interpreter's video window is always prominently displayed, even if another participant is sharing their screen, is therefore vital to maintaining effective communication. As AAO explains, these issues can be partially addressed by "spotlighting" and "multi-pinning":[180]

> Spotlighting sign language, cued speech or other interpreters ensures that these individuals are easily visible amidst multiple video streams or when displayed on small screens. While this is necessary for all individuals who rely on interpreters, it is especially important for consumers with visual impairments or close vision, who need full visibility of an interpreter to actively participate.[181]

58. To ensure that critical visual information is accessible, users also must be able to reconfigure the layout and visibility of video windows appearing on the users' own device. Each open video window reduces the on-screen real estate available for other windows. As a result, a sign language user's window may become too small to allow for effective sign language communication. This is true even if the user's video window is pinned, because pinning, alone, does not alter the relative size of the video windows. A call participant who requires sign language must therefore be able to minimize or hide

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[177] AAO Apr. 30 *Ex Parte* at 1.

[178] *See* DAC Video Conferencing Report at 3.

[179] *See* 47 CFR § 79.103(c)(1)-(10). The character customization requirements for digital apparatus mandate the ability to change character size between 50% and 200% of the default size. *See id*. § 79.103(c)(4). Digital apparatus covered by section 79.103 must also allow captions and caption backgrounds that can display the 64 colors and 8 fonts defined in the CEA-708 standard, as well as allow users to override the authored colors and choose from at least 8 specified colors. *Id.* § 79.103(c)(2), (5), (6), (8). We do not replicate those specific requirements here. However, the CEA-708 standard may provide a useful reference point for IVCS providers and equipment manufacturers in assessing their caption customization options. Additionally, we note that limiting captions to a very small character size range may be insufficient to meet the performance objective.

[180] "Spotlighting" identifies a particular window as the active speaker, making that user's window visible on all other users' screens. Spotlighting capability is generally only available to a conference call's host. "Pinning" and "multi-pinning" allow a user to disable the active speaker view and determine which video window (or windows) will always be visible on the user's own screen. *See, e.g.*, "Pin or Spotlight a video in Zoom Rooms," (Dec. 22, 2023), https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0068261#:~:text=Pinning%20another%20user's%20video%20will,the%20meeting%20and%20cloud%20recordings.

[181] AAO Apr. 30 *Ex Parte* at 1.

extraneous windows, expand the windows of their choice, or relocate particular windows. For example, a participant may utilize the multi-pinning feature to pin both a presentation leader and an interpreter, move the windows so they remain side-by-side, and then expand both windows to allow the participant to clearly view the interpreter without missing out on visual cues from the speaker. As another example, a sign language user on a conference call with multiple other sign language users may want to pin all of their windows and place them together to ensure all sign language users are visible.

59. In addition, participants must be able to edit their own display names.[182] This allows participants (including interpreters and third-party accommodation services) to quickly differentiate themselves from other call participants, helping sign language users and interpreters find each other more easily, especially in conference calls with many participants. Again, every moment a sign language user and an interpreter spend trying to connect to each other is a moment of lost communication and participation for the user.

60. The record indicates that, while some video conferencing providers currently offer spotlighting and multi-pinning capabilities, typically they are controlled by the call's host, who must either make such adjustments themselves or specifically allow that privilege to a requesting participant.[183] As a result, individual users may be deprived of the ability to directly customize their in-call experience in a way that works best for them.[184] Commenters therefore assert that IVCS providers should enable any participant in a video conference to customize their settings for accessibility.[185]

61. Accordingly, the performance objective we adopt specifically provides that *users* be able to activate and adjust the display of speakers and signers. As with captioning controls, the relevant or achievable settings may vary for different kinds of IVCS (*e.g.*, more settings may be needed for a video conferencing service that is frequently used for conferences involving large groups, than for one whose target market rarely includes participants in large-group video conferences). For large-group video conferences, in particular, accessibility requires that pinning, multi-pinning, spotlighting, and window configuration functionality be available, and that those functions can be accessed in individual users' settings menus, without having to obtain permission from a call host.[186]

62. CTA raises a general concern that an overly detailed performance objective "would lock in user interface designs," and urges the Commission to "resist making regulatory choices that will necessarily limit the ability of IVCS providers and equipment manufacturers to shape and adjust their user interfaces."[187] We conclude that this performance objective strikes an appropriate balance between flexibility and specificity. As with all Part 14 performance objectives, the new and amended objectives

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[182] As Sorenson notes, VRS CAs identify themselves by a CA Number, rather than their name, to protect their privacy. *See* Sorenson Comments at 40. As discussed below (*infra* para. 115), we amend our TRS rules to *require* VRS CAs to identify their employer. Compliance with this rule requires that participants be able to change their display names.

[183] AAO Apr. 30 *Ex Parte* at 1. A conference call host may also disable the in-call chat feature, leaving participants unable to contact the host to request access to these features. In such scenarios the host may not even be aware that accommodations are needed.

[184] *Id.* ("[H]aving to make this request impedes the independence of participants who need this feature and more often than not causes a delay before the call can get underway.").

[185] *See*, *e.g.*, CEA Comments at 20 (agreeing with the DAC Video Conferencing Report's recommendation to require user control of accessibility settings); Sorenson Comments at 40 (same).

[186] We note that while some IVCS calls utilize a "hosted" conference room, *i.e.*, a single virtual location that all call participants connect to, others are designed primarily for unhosted, person-to-person video calls. The performance objective we adopt applies to all forms of IVCS.

[187] CTA Comments at 10.

are outcome-oriented and do not mandate a technical standard.[188] We also emphasize that the rule we adopt does not dictate how IVCS providers must organize their user controls. Individual providers may decide what layouts and configurations are appropriate for their services, as long as the results comply with our rules.

63. *User Control of Other Features*. The performance objective we adopt also provides that users be able to activate and adjust "other features for which user interface control is necessary for accessibility." Although some commenters argue for additional specificity,[189] at this time, we do not attempt an exhaustive catalog of all such features. However, the fact that a particular feature is not mentioned in the performance objective does not imply that it is unnecessary for accessibility. For example, AFB recommends that we include a specific requirement for IVCS platforms to include screen reader verbosity controls.[190] We agree that this functionality is an important means for blind and low-vision users to be able to follow and participate in a video conference and that such user control may often be necessary for accessibility.[191] To that extent, verbosity controls (as well as other features not specifically mentioned) are included in the performance objective. However, to individually address this and other user controls recommended by commenters, we believe the record would benefit from additional information about the specific aspects of interface control that are most important to address in the video conference setting. We seek further comment on this issue in the *Further Notice*.

64. *Settings Retention*. CEA suggests that IVCS users' accessibility preferences should be stored and retained within the IVCS platform, so that users will not have to change the settings each time they use the service.[192] We find the record insufficient to address this proposal. In the *Further Notice*, we seek additional comment on the need for such an objective, how it would apply across devices, and the technical issues involved.

d. Text-to-Speech

65. *Background*. To ensure that IVCS is accessible for people with speech disabilities, the Commission proposed to amend Rule 14.21(b)(1)(ix), which specifies that ACS be operable in "at least one mode that does not require user speech,"[193] to specify that IVCS provide text-to-speech functionality.[194]

66. *Comments*. Three commenters directly address this issue. CEA and NFB express support for the proposal, while CTA opposes it, contending that AI-based text-to-speech software is "still nascent."[195] Another commenter urges the Commission to address speech disabilities in a different way,

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[188] *See* 47 U.S.C. § 617(e)(1)(D).

[189] *See* CEA Comments at 21 & Appx. A.

[190] AFB Comments at 2. Many screen readers include settings to determine what on-screen information is conveyed via the screen reader. In a video conference, some screen reader users may prefer to hear only the conversation itself, while others may want to be made aware of non-auditory information such as reaction emojis and chat conversations. Screen readers generally allow some degree of control over what information is read aloud; however, device-level settings may not be able to convey information that is specific to an IVCS platform, such as raised hands or notifications when a participant enters or leaves the conference call.

[191] According to AFB, some video conferencing platforms currently allow users to independently customize their verbosity settings. *See id*. at 2. For example, at least one popular video conferencing platform allows users to select whether their screen reader will announce when they have received a chat message, when their audio is muted by a host, when screen sharing has been started or stopped by a participant, and other non-auditory information.

[192] CEA Comments at 40 (Appx. A).

[193] 47 CFR § 14.21(b)(1)(x).

[194] *Notice*, 38 FCC Rcd at 6322, para. 54.

[195] *See* CEA Comments at 13; NFB Comments at 1-2; CTA Comments at 11.

by modifying its rules to "ensure integration of and compatibility with ASR engines capable of making the speech of people with nonstandard or atypical speech comprehensible to others on video conference calls."[196]

67. *Discussion.* The existing rule specifies that, to be accessible, IVCS must be operable *without* user speech—for which a logical implementation would be the provision of text-to-speech functionality. However, the record indicates that an additional way of making IVCS operable by people with speech disabilities is available, in the form of speech-to-speech technology products, which automatically convert speech that is difficult to understand to speech that is more understandable.[197] Therefore, at this time we do not adopt the proposed modification. Instead, in the *Further Notice*, we seek additional comment on modifying section 14.21(b)(1)(ix) to encompass a broader range of solutions for people with speech disabilities.

e. Other Performance Objectives Proposed by Commenters

68. In the *Notice*, the Commission sought comment on whether additional performance objectives should be specified for IVCS to address other accessibility concerns.[198] A number of the performance objectives suggested by commenters merit the Commission's consideration. In many instances, however, the current record is insufficient to address them at this time. In the *Further Notice*, we seek additional comment on these proposals. Other commenter proposals appear to be inconsistent with the flexible, outcome-oriented approach the statute directs us to take.

69. *Tablet Support*. CEA recommends adoption of a performance objective requiring that video functionality, screen sharing, video window re-sizing, and video sharing be compatible with tablets.[199] CTA objects to this proposal, contending that tablet compatibility represents a *de facto* technical mandate.[200] While we recognize that people with disabilities often have particular difficulty in accessing IVCS on tablets, the record is insufficient to enable us to determine whether a performance objective specific to tablets is needed, and how it should apply. For example, an IVCS provider may choose not to make its service available on tablets, or may not design an app specifically for tablets. Further, it is unclear to what extent responsibility for tablet compatibility should be placed on tablet manufacturers, IVCS providers, or both. In the *Further Notice*, we seek additional comment on whether a tablet-specific performance objective is needed, and whether additional performance objectives should apply to manufacturers of tablets and other devices used to access IVCS.

70. *Window Layout and Extra Channels.* The current record is also insufficient to address CEA's recommendations that performance objectives specify that IVCS provide a "gallery view mode," "ensure that a sufficient number of videos is supported without degrading the quality of the video or audio," and include dedicated video- and text-based side channels.[201] CTA raises several objections to these proposals, stating variously that they are technologically infeasible, implicate variables outside of a video conferencing provider's control, exceed the Commission's authority, or are technical mandates in all but name.[202] While the proposed features can be beneficial, we are concerned that unnecessarily specific requirements could dampen incentives for entrepreneurship and innovation in this rapidly

[196] VoiceItt Reply Comments at 5; *see also* AAO Apr. 30 *Ex Parte* at 3 (asking the Commission to require the ability for people with speech disabilities "to access both text-to-speech functionality and automated speech recognition functionalities that are specially designed to generate understandable speech for these individuals").

[197] VoiceItt Reply Comments.

[198] *Notice*, 38 FCC Rcd at 6324, para. 57.

[199] CEA Comments at 35 (Appx. A).

[200] CTA Reply Comments at 5-6.

[201] CEA Comments at 33-41 (Appx. A).

[202] *See* CTA Reply Comments at 4-8.

evolving market. In addition, as noted in the *2023 Video Conferencing Order*, IVCS encompasses a broad variety of video communication services,[203] for which the recommended performance objectives may not be uniformly applicable or relevant. In the *Further Notice*, we seek additional comment on the need for specific performance objectives in these areas, as well as whether such objectives could be implemented without adversely affecting the benefits of innovation in this sector.

71. *Audio Description, Tactile Mode, and Accessibility of Shared Documents.* For similar reasons, we also conclude that the record is insufficient to address ACB's recommendation that IVCS providers be required to enable access for audio description of video and visual images,[204] ACB's and AFB's requests that performance objectives be adopted or amended to provide that IVCS be operable and visual information be available in tactile mode,[205] and AFB's recommendation to add "shared documents" to the list of information that must be made accessible pursuant to section 14.21(b)(2).[206] However, we stress that our rules prohibit IVCS providers from impeding the use of third-party services, equipment, or software to provide audio descriptions.[207] In the accompanying *Further Notice*, we seek additional comment on whether to adopt a performance objective specifying these functions.

72. *Ten-Digit Telephone Numbers*. We decline CEA's recommendation that the Commission require IVCS providers to offer a dial-in option via a ten-digit telephone number,[208] so that TRS-eligible IVCS users can use TRS in video conferences despite the difficulties described elsewhere in this *Second Report and Order*. Such a requirement would entail a major change in business practices for IVCS providers, many of whom have not designed their platforms to connect with telephone networks. Further, the rules adopted in this *Second Report and Order* will require IVCS providers to enable users to connect with providers of third-party captioning and sign-language interpretation services, including IP CTS and VRS. Thus, developments are already under way to accomplish the goal CEA seeks, without the need to force disruptive changes in IVCS providers' business models.[209]

73. *Application to Recorded Video Conferences*. We decline to adopt ACB's recommendation that any accessibility requirements for IVCS should apply if a video conference is recorded and subsequently shared.[210] If the video conference is recorded and shared by a host, participant,

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[203] *See 2023 Video Conferencing Order*, 38 FCC Rcd at 6313-14, para. 29.

[204] ACB Comments at 2; CCD-TTTF Comments; *see also* Bridge Comments at 2 (urging the Commission to require IVCS providers to offer audio description of videos played during the course of a meeting). Relatedly, Bridge Multimedia urges the Commission to expand TRS eligibility to include providers of live audio description and visual image descriptive services. Bridge Comments at 1. Our section 225 authority is limited to making TRS available for people who are deaf, hard of hearing, deafblind, or have a speech disability. *See* 47 U.S.C. § 225(a)(3), (b)(1). An audio description service would not fall within this definition, and the Commission lacks authority to expand the definition beyond the boundaries dictated by Congress.

[205] ACB Comments at 1; AFB Comments at 2.

[206] AFB Comments at 2. The regulation currently states that section 14.21(b)(2) applies to "all information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues."

[207] *See* 47 CFR § 14.20(a)(4) ("Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability"); *id.* § 14.20(a)(5) ("Providers of advanced communications services, manufacturers of equipment used with these services, and providers of networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks."); *id.* § 14.20(c).

[208] CEA Comments at 30 (Appx. A).

[209] The Commission may revisit whether a dial-in option is needed if future developments cast doubt on these assumptions.

[210] ACB Comments at 3; *see also* Bridge Comments at 2.

or third party, it is not evident why the IVCS provider should be responsible for the accessibility of such recordings. Further, many IVCS platforms may not include a feature that facilitates or delivers such recordings.[211]

74. *Accessibility Symbols and Language*. We decline to adopt the recommendations of the Global Alliance of Speech-to-Text Captioning to require that all IVCS platforms use the "universal captioning symbol "(CC)" to identify captioning settings, and that those settings be on the first screen of the settings menu.[212] The group also suggests requiring "consistent accessibility language related to captioning" across platforms.[213] Performance objectives are outcome-oriented requirements that allow flexibility for providers to accomplish the objectives in the means best suited to their specific circumstances.[214] They should not mandate what symbols IVCS providers must use, where they must put those symbols, and what terms they must use when describing their accessibility offerings.

5. Safe Harbor Technical Standards

75. Section 716 of the Act provides that the Commission shall not adopt mandatory technical standards for ACS accessibility.[215] However, the Commission may adopt technical standards "as a safe harbor for such compliance if necessary to facilitate the manufacturers' and service providers' compliance."[216] The *Notice* sought comment on whether there were any technical standards available or in development that could serve as safe harbors for IVCS compliance with one or more performance objectives.[217]

76. We do not adopt any safe harbor standards for IVCS accessibility at this time, as no relevant standards were identified by commenters. Indeed, some commenters expressed doubts as to whether safe harbor standards could be helpful in this context. For example, CEA contends that establishing a safe harbor risks locking in *de facto* technical mandates, thereby inhibiting innovation.[218] CTA echoes this assessment, noting that specific technical standards could stifle the development of new accessibility features.[219]

77. One candidate for a safe harbor standard was suggested by the California Public Utilities Commission and Telecommunications Access of Maryland (Maryland Relay), who recommend the real-time text (RTT) technical standard as a safe harbor.[220] Maryland Relay notes that RTT allows for

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[211] *See* 47 U.S.C. § 153(27) (defining "IVCS" as "[a] service that provides *real-time* video communications, including audio, to enable users to share information of the user's choosing") (emphasis added).

[212] *See* Global Alliance of Speech-to-Text Captioning Express Comments (filed Sept. 4, 2023) (Global Alliance Comments).

[213] *Id.* at 2.

[214] *See 2011 ACS Notice*, 26 FCC Rcd at 3171-72, para. 105.

[215] 47 U.S.C. § 617(e)(1)(D).

[216] *Id.*

[217] *Notice*, 38 FCC Rcd at 6326, paras. 65-67.

[218] CEA Comments at 16 ("Objectives inspire creativity while mandatory standards have the potential to stifle innovation and delay development."); *id.* at 17 ("technical standards, even as safe harbors, would discourage creativity and innovation and lead to a lowest-common denominator technical environment, rather than spurring fresh ideas.").

[219] CTA Comments at 2.

[220] *See* CPUC Reply Comments at 1-2; Maryland Relay Comments at 1-3. The term "real-time text" does not itself denote a particular technical standard; rather, it refers to communications technology that enables "text communications that are transmitted over Internet Protocol immediately as they are created, *e.g.*, on a character-by-

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simultaneous transmission of text, audio, video, and data; is already supported on most modern smartphones; and has already been implemented in VRS, making it relatively easy to further incorporate into video conferencing platforms.[221] CPUC adds that RTT is a widely known, well understood, and user-friendly standard.[222]

78. However, neither Maryland Relay nor CPUC explain which performance objectives would be implemented using RTT, or why the designation of RFC 4103 as a safe harbor is necessary to facilitate compliance with Part 14 with respect to IVCS. Without a more detailed explanation of why an RTT-based safe harbor would further the Commission's goal of increasing video conferencing accessibility, we are not persuaded that it is needed in this context.

6. Part 14 Compliance Dates

79. We allow IVCS providers two years to comply with the accessibility requirements adopted in this *Second Report and Order*.

80. Two commenters directly address the compliance date issue. CTA urges the Commission to allow three years for compliance, asserting that a three-year period "reflects the product development timelines for today's sophisticated video conferencing products and services and would be consistent with Commission precedent for the implementation of new rules."[223] CEA argues that 18 months is sufficient, stating that most of the proposals in the *Notice* "are very straightforward and should be easily achievable by service providers within a relatively short period of time."[224]

81. We conclude that a full product development cycle should not be needed to implement the additional rule provisions added by this *Second Report and Order*. The performance objectives we adopt today supplement the existing performance objectives for ACS, which became effective in 2012. Pursuant to the *2023 Video Conferencing Order*, IVCS providers were allowed an additional year, until September 3, 2024, to meet the existing performance objectives.[225] We find that an additional two-year period is appropriate for IVCS providers to complete any further development, testing, and deployment of modified software, to the extent needed to comply with the new provisions.[226]

82. Although we largely agree with CEA that, for some service providers, the proposed performance objectives "should be easily achievable . . . within a relatively short period of time,"[227] for other (perhaps smaller) providers, compliance may require additional preparation and consultation. Additionally, as noted earlier, the breadth of IVCS entities now subject to the ACS rules is expansive. Providers of small, niche, or startup conferencing services may need to prioritize software development to suit their specific circumstances. Given these dueling considerations, we conclude that the most

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character basis." 47 CFR § 67.1(g). These commenters appear to be referring to RFC 4103, a technical standard that is currently referenced by the Commission's rule governing RTT. *Id.* § 67.2(a)(2).

[221] Maryland Relay Comments at 3.

[222] CPUC Reply Comments at 1-2.

[223] *See* CTA Comments at 3.

[224] *See* CEA Comments at 2.

[225] *2023 Video Conferencing Order*, 38 FCC Rcd at 6343, para. 131; *2023 Video Conferencing Effective Date Public Notice,* 38 FCC Rcd at 6778.

[226] To reiterate, compliance with the new provisions within the two-year timeline is only required to the extent that such compliance is achievable. 47 CFR § 14.20.

[227] CEA Reply Comments at 2.

appropriate compliance date is two years from the effective date of this *Second Report and Order*.[228]

7. Costs and Benefits

83. We conclude that the substantial benefits of our actions in this proceeding outweigh any costs they are likely to impose. Our actions in this proceeding implement Congress' directive to adopt performance objectives to ensure the accessibility of ACS, including IVCS, without unduly burdening the provision of IVCS. Like the existing performance objectives, the amended performance objectives are outcome-oriented, preserving flexibility in implementation and encouraging the development of efficient accessibility solutions. Further, the two-year compliance deadline balances the potentially significant industry-wide changes the CVAA requires with the need to ensure that people with disabilities can take advantage of the benefits of IVCS.

84. The benefits of the IVCS rules for people with disabilities are extensive. As the COVID pandemic made clear, the benefits of ensuring access to video conferencing are enormous. Indeed, as we have noted repeatedly, video conferencing is now a practical necessity for communication, having become, for most of our population, a mainstay of business, education, health,[229] and personal life. Whether talking one-on-one with friends or participating in a multi-party conference call, people with disabilities benefit enormously from having the same opportunities as other Americans to make use of this modern form of communication service. As CEA points out: "The near ubiquity of video conferencing, and the heavy reliance on it by educators, government, and business for virtual meetings and collaboration, not to mention its use for social interaction, have made accessibility to, and usability of, these services a necessity for our community if we are to aspire to full participation in modern life."[230]

85. Although the *Notice* requested comment on the potential costs that the Commission's proposals would impose, we received no specific cost estimates from commenters. Regardless, we emphasize that, as with the existing Part 14 performance objectives, compliance with each of the amended performance objectives adopted here is conditioned on the objective being "achievable," which means it can be achieved "with reasonable effort or expense."[231] Therefore, the rules themselves include a safeguard to ensure that the burden and cost of compliance will not be unreasonable, considering, among other factors, the technical and economic impact on the company's operation and the extent to which accessible services or equipment are already being offered by the company.[232] We conclude that, as a result of this safeguard, which is applicable to certain other accessibility obligations imposed by the Act, the resulting cost burden is likely to be comparable to the cost imposed on other segments of the communications industry by rules incorporating an analogous condition—*e.g.*, the cost incurred by other ACS providers and manufacturers to comply with the generally applicable accessibility requirements of section 617.[233] To a significant extent, the rules we adopt today serve to clarify pre-existing obligations of IVCS providers, and for that reason as well are unlikely to be more burdensome than existing accessibility requirements.

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[228] The *2011 ACS Order* allowed two years after the release date for compliance with the initial Part 14 rules, except for the recordkeeping requirements, for which compliance was required one year after the effective date of the rules. *2011 ACS Order*, 26 FCC Rcd at 14601-05, paras. 105-13. We do not amend the recordkeeping requirements in this *Second Report and Order*.

[229] CTA noted in an earlier comment that "video conferencing has been a key component of the move to telehealth," which it calls a "great equalizer in a healthcare system where social and economic disparities continue to affect patient care." CTA Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 4 (filed June 21, 2022) (CTA 2022 IVCS Refresh Comments).

[230] CEA Comments at iv.

[231] 47 CFR § 14.10(b); 47 U.S.C. § 617(g).

[232] 47 CFR § 14.10(b)(2), (4); 47 U.S.C. § 617(g)(2), (4).

[233] *See 2011 ACS Order*, 26 FCC Rcd at 14605-19, paras. 114-48.

B. Providing TRS in Video Conferences

86. In Part III.A. above, we amend our Part 14 rules to require, among other things, that IVCS providers allow users to connect with third-party captioning and sign language interpretation services, unless it is not achievable to do so. In this Part, we amend our rules to facilitate the integrated provision of TRS to enable functionally equivalent participation in video conferences.[234] By "integrated provision of TRS" in a video conference, we mean an arrangement whereby communication between the CA (or automated equivalent) and the TRS user, whether by text or video, takes place on the video conferencing platform, rather than through a separate connection.[235] Just as the TRS Fund has long been used to support the provision of TRS with audio-only teleconferencing, we find it is necessary and appropriate that the TRS Fund be used to support the provision of TRS with video conferencing, as needed for functionally equivalent communication.[236] At this time, we do not *require* any TRS provider to provide TRS in video conferences on an integrated basis. Rather, the rules adopted in this *Second Report and Order* are intended to facilitate the provision of TRS in video conferences while protecting the TRS Fund against potential waste, fraud, and abuse. In the *Further Notice,* we seek comment on what additional rules may be needed to achieve these objectives.

1. Legal Authority

87. *Comments*. Two commenters discussed in detail whether the Commission has statutory authority to direct TRS Fund support to the provision of TRS in video conferences on an integrated basis.[237] Both agree with the Commission's tentative conclusion that it has such authority.[238] The only dissenter, Sign-Speak, filed reply comments in which it contends, with little elaboration, that "[p]roviding interpretation for video calls held on privately hosted IVCS platforms falls outside the scope of the TRS fund."[239]

88. *Discussion*. We adopt the Commission's tentative conclusion. Specifically, we conclude that the integrated provision of relay service in a video conference (i.e., without the need for the CA to have a voice-only connection to the video conference and a separate data or video connection to the TRS user) fits the statutory definition of TRS as a "telephone transmission service" enabling "communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio."[240]

89. As indicated by the text quoted above, section 225 defines relay services in terms of their purpose—to enable people with hearing or speech disabilities to "communicat[e] by wire or radio" in a manner that is functionally equivalent to how people without such disabilities use "voice communication

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[234] *See* DAC Video Conferencing Report at 5-6; CEA Comments at 9-11; Sorenson Comments at 34-38; Hamilton Reply Comments at 2; Convo Comments at 2; ZP Reply Comments at 2; ClearCaptions Comments at 4-5.

[235] *See* DAC Video Conferencing Report at 3-4 (describing how the difficulties associated with the need for a separate video connection between VRS user and CA on video conference calls); Sorenson Comments at 6-8 (same).

[236] LanguageLine contends that funding TRS users' participation in video conference calls is somehow a "profound change" that will negatively impact the deaf community in various areas such as healthcare. LanguageLine Comments at 1. The TRS Fund already compensates TRS providers for their users' participation in video and audio conference calls. The obligations of various industry sectors to provide accommodations for individuals with disabilities under federal, state, and local laws remain unchanged.

[237] *Notice*, 38 FCC Rcd at 6327, para. 69.

[238] *See* Sorenson Comments at 34-38; Sorenson Reply Comments at 21-23; CEA Comments at 9-13, 21-22; CEA Reply Comments at 5.

[239] Sign-Speak Reply Comments at 5.

[240] 47 U.S.C. § 225(a)(3) (defining TRS).

services."[241] In turn, "communication by wire" and "communication by radio" are broadly defined by the Act,[242] using terms that encompass, among other things, communication via the Internet or Internet Protocol.[243] In addition, IVCS, which is defined to include audio communication,[244] is appropriately characterized as a "voice communication service" for purposes of section 225.

90. As for "telephone transmission service," which is not defined in the Act, the Commission has given this term a broad interpretation, noting that it is "constrained only by the requirement that such service provide a specific functionality," namely the ability to communicate by wire or radio in a manner functionally equivalent to *voice* communication.[245] For example, in prior decisions authorizing new forms of TRS, the Commission has repeatedly found that Internet-based relay services are not limited to a specific technical configuration,[246] and has not interpreted "telephone transmission service" as requiring the use of telephone numbers.[247] Consistent with these prior decisions, we conclude that the inclusion of video imaging in the underlying service to which TRS is applied does not change the fundamental character of TRS itself as a "telephone transmission service." Whether TRS is used to relay ordinary voice telephone service or the voice portion of a video conferencing service, it remains essentially *telephone* transmission service: regardless of the additional content that may be included, along with voice, in the underlying communication, the essential purpose of TRS is to ensure that the *telephonic* (i.e., voice) characteristics of a communication are rendered communicable, in a functionally equivalent manner, to people with hearing or speech disabilities.[248]

91. Commenters addressing the issue generally agree with our analysis of section 225.[249] For

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[241] *Id.*

[242] *See* 47 U.S.C. § 153(59) (defining "communication by wire" as "the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission"); *id.* § 153(40) (defining "communication by radio" as "the transmission by radio of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission").

[243] *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-54, paras. 21-27 (2000) (*2000 TRS Order*) (allowing TRS Fund compensation for VRS); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 387-90, paras. 19-26.

[244] 47 U.S.C. § 153(27).

[245] *2002 IP Relay Declaratory Ruling,* 17 FCC Rcd at 7783, para. 10. Further, section 225 directs the Commission to "ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology." 47 U.S.C. § 225(d)(2).

[246] *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 387-38, paras. 20-22; *2000 TRS Order*, 15 FCC Rcd at 5152-53, paras. 22-23.

[247] VRS users were not assigned NANP numbers until 2008. *See 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 and WC Docket No. 05-196, 23 FCC Rcd 11591, 11594, para. 4 (2008) (prior to assignment of 10-digit telephone numbers, VRS users were assigned "dynamic" Internet addresses).

[248] *See* https://www.collinsdictionary.com/us/dictionary/english/telephone (quoting various dictionary definitions of "telephone," including, e.g., as "an apparatus, system, or process for transmission of sound or speech to a distant point, esp. by an electric device").

[249] *See* Sorenson Comments at 34-38; Sorenson Reply Comments at 21-23; CEA Comments at 9-13, 21-22; CEA Reply Comments at 4-5 (stating that "[t]here is no question that the Commission has the authority to take further action to improve the accessibility and usability of interoperable video conferencing services"). The only dissenter, Sign-Speak, contends, without further explanation, that "[p]roviding interpretation for video calls held on privately

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example, Sorenson notes that the Senate Report to the ADA explained that "the provisions of this section [225] do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology."[250]

2. Timing of Commission Action

92. *Comments*. Several commenters recommended that the Commission delay the adoption of new TRS rules to allow more time for collaboration among stakeholders on potential solutions.[251] Some commenters also suggest that the Commission form a DAC working group tasked to develop recommendations for any further rules.[252] Convo also proposes the creation of a VRS-on-IVCS pilot program to "develop important data to inform the Working Group's efforts and the FCC's rulemaking process."[253] Pointing to the success of the pilot program for at-home VRS call handling, Convo contends that such a pilot program would help identify challenges and determine effective means for using VRS on IVCS calls.[254]

93. *Discussion*. We agree that collaboration among stakeholders may help accelerate efforts to provide TRS in video conferences on an integrated basis. However, given the centrality of video conferencing in today's society, it is important that we adopt rules addressing the provision of TRS in video conferences without undue delay. This is especially true for VRS, as alternative sign language interpretation services are not always available for video conferences. Therefore, in this part of the *Second Report and Order*, we amend our rules in a number of ways to facilitate the integrated provision of TRS, and especially VRS, in video conferences.[255] Regarding some aspects of VRS, as well as other forms of TRS, we find that the current record does not enable us to formulate an appropriate rule, and we seek further comment on such unresolved issues in the accompanying *Further Notice*.

94. *VRS-on-IVCS Pilot Program.* We do not see a need to authorize a pilot program for the integrated provision of VRS in video conferences, as suggested by Convo.[256] The Commission has conducted pilot programs, such as the at-home VRS call handling pilot program[257] and the National Deaf-

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hosted IVCS platforms falls outside the scope of the TRS fund," asserting that the TRS Fund's purpose "is [to compensate] TRS providers for reasonable costs of providing interstate telephone transmission services." Sign-Speak Reply Comments at 4-5. As explained above, the Commission has rejected this narrow view of section 225.

[250] Sorenson Comments at 35.

[251] *See* Convo Comments at 5-7; Hamilton Comments at 1; Sorenson Comments at 44 (with respect to IP CTS); T-Mobile Accessibility Comments at 2-4.

[252] *See* ClearCaptions Comments at 4-5; Convo Comments at 1; Hamilton Comments at 1; T-Mobile Reply Comments at 3-4.

[253] Convo Comments at 1.

[254] *Id.* at 8; *see Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, 35 FCC Rcd 831 (2020) (*At-Home Call-Handling Order*) (adopting final at-home VRS call-handling rules).

[255] Unlike the rules adopted in Part III.A, for which compliance is required within two years after the effective date, the rules adopted in this Part are applicable on the effective date.

[256] Convo Comments at 7-11.

[257] *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2455-57, paras. 46-49 (2017) (*2017 VRS Improvements Order*) (initiating pilot program).

Blind Equipment Distribution Program (NDBEDP),[258] in the context of allowing a service or a mode of providing a service that was not previously allowed by our rules, or when a pilot program is mandated by Congress.[259] With such a pilot program, the Commission can study what adjustments to its rules may be needed to allow a new service or new program.[260]

95. However, pilot programs, by their nature, have a sunset date, and require affirmative action by the Commission to extend the sunset date or convert the pilot program to permanent rules allowing the new service.[261] Given the importance and urgency of making VRS available in video conferences on an integrated basis, and the progress that has been made to date in integrating VRS with IVCS, we do not believe the more tentative, pilot-program approach is appropriate here. Indeed, the integrated provision of VRS on video conference calls has already begun on a limited scale.[262] Instituting a pilot program could be incorrectly perceived as signaling uncertainty as to the net benefits of such integration, potentially causing unnecessary delay in the availability of integrated VRS.[263]

96. It is clear from the comments that TRS and video conferencing service providers believe collaboration will continue for the foreseeable future. Any insights gleaned from such collaboration can inform the Commission's rulemaking process going forward, without the need to wait for a pilot program to produce results.[264]

3. Integrating the Provision of VRS in Video Conferencing

97. We also adopt the Commission's tentative conclusion, with which commenting parties generally agree,[265] that the integrated provision of VRS with video conferencing is often necessary to

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[258] *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Equipment for Deaf-Blind Individuals,* CG Docket No 10-210, Report and Order, 26 FCC Rcd 5640 (2011) (*2011 NDBEDP Order*).

[259] *See Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006) (*RHC Pilot Program Order*) (establishing a pilot program to examine how the rural health care funding mechanism can be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services, pursuant to the Telecommunications Act of 1996).

[260] *See 2017 VRS Improvements Order*, 32 FCC Rcd at 2463, para. 59 (pilot program will provide comprehensive information about the costs and benefits of allowing at-home workstations); *2011 NDBEDP Order,* 26 FCC Rcd at 5642, para. 3 (experience of pilot program will inform Commission action in establishing a permanent program in compliance with the statute); *RHC Pilot Program Order*, 21 FCC Rcd at 11112, para. 4 (pilot program will lay the foundation for a rulemaking proceeding).

[261] *See At-Home Call-Handling Order*, 35 FCC Rcd at 833-34 (adopting permanent rules for at-home VRS call-handling).

[262] *See* Sorenson Comments at 8-12 (describing efforts to provide integrated VRS on video conferences).

[263] *See* Sorenson Reply Comments at 18 ("It's not clear what a pilot program would accomplish except to delay rollout of VRS-IVCS solutions.").

[264] Convo Comments at 7. Multiple commenters suggest that the Commission charter a DAC working group composed of representatives of video conferencing providers, TRS providers, and accessibility advocates, who would be tasked with developing recommendations for further rules. *See, e.g.*, ClearCaptions Comments at 4-5; Convo Comments at 1; Hamilton Comments at 1; Sorenson Comments at 18; T-Mobile Reply Comments at 3-4. As indicated in the text, we believe that we can make significant progress now toward improving the accessibility of video conferencing calls. As stakeholders continue to collaborate, we can consider whether chartering a DAC working group with specific tasks would be useful for this effort.

[265] *See* Sorenson Comments at 2-11 (describing improved participation in IVCS with integrated VRS); Convo Comments at 3-5 (describing challenges of participating in video conferences for deaf and hard of hearing individuals); CEA Comments at 6-9 (same).

enable sign language users to communicate in a functionally equivalent manner.[266] As noted previously, connecting a VRS CA to a video conference may not be possible if there is no dial-in connection,[267] and, even if there is, that configuration creates difficulties for the VRS user, if, for example, the user must constantly navigate between devices.[268]

98. Sign-Speak objects to our approach to integrating VRS with video conferencing services, claiming that authorizing TRS Fund compensation for VRS integrated with video conferencing platforms will "nationalize" the ASL interpreting industry, putting out of business many Video Remote Interpretation (VRI) services, who currently provide translation services for conference calls.[269] Such speculative concerns do not justify prohibiting or delaying the integrated provision of VRS in video conferences. The rules adopted in this *Second Report and Order* do not prohibit video conference hosts or participants from using non-VRS interpretation services. Indeed, we expect that VRI will be preferred for video conferences, as VRI interpreters employed by a video conference host generally will have more opportunity to prepare, and are more likely to have expertise in the specific subject matter of a video conference. Many organizers and hosts of video conferences calls have obligations under the ADA or other laws to provide accommodations for people with disabilities, including English-to-ASL interpretation, for which the use of VRS often may not be suitable.

99. To facilitate the integration of VRS with IVCS, we amend our rules, as set forth below, to ensure the appropriate use of VRS with video conferencing, and to prevent waste, fraud, and abuse. The rules we adopt today are designed to allow VRS providers to integrate their services with video conferencing so that VRS customers can participate in a video conference call with the presence of a VRS CA on the video platform, while protecting the TRS Fund from waste, fraud, and abuse. As video conferencing service evolves and VRS providers and the Commission gain more experience with the integrated provision of VRS in video conferences, some of the rules below may be revisited.

a. Permissive Approach

100. At this time, we do not *require* VRS providers to provide VRS in video conferences on an integrated basis.[270] We believe that VRS and video conferencing providers need to continue collaborating to ensure that VRS is available to sign language users on IVCS platforms, and we generally encourage all VRS and video conferencing providers to be receptive to such collaboration. However, we recognize that integration of VRS with video conferencing services, including all necessary user verification, billing, and other requirements, may present technical issues for both VRS and video

[266] By "integrated provision of VRS" in a video conference, we mean an arrangement whereby a CA is included as a participant in the video conference and all communication between the CA and the participants takes place on the video conferencing platform rather than through a separate connection. A VRS user relying on a CA who appears on a separate screen while connected to the conference audio is non-integrated provision of VRS. Non-integrated provision of VRS remains a compensable form of TRS, and is not affected by the rules adopted in this proceeding.

[267] Such a connection is often unavailable. DAC Video Conferencing Report at 2-4; CEA Comments at 8. Assuming the video conferencing platform allows a dial-in connection, in a hosted video conference it is the host who determines whether to provide such an option.

[268] *See supra* para. 12; DAC Video Conferencing Report at 2-4; CEA Comments at 8-9; Sorenson Comments at 6-9. In addition, the CA who, unlike other participants, is limited to an audio connection, is unable to read documents or other text that may be displayed, interpret facial expressions, or attend to other visual cues on which video conference participants often rely for effective communication. *See* DAC Video Conferencing Report at 3.

[269] Sign-Speak Reply Comments at 3-5; Letter from The Sign-Speak Team to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123, at 2 (filed Dec. 6, 2023); LanguageLine Comments at 2 (expressing a similar concern that "[m]erging these systems [VRI and VRS] under the TRS could inadvertently ostracize a significant portion of language-services firms").

[270] *Notice*, 38 FCC Rcd at 6329, para. 76.

conferencing providers.[271] The record does not provide useful information on how much time IVCS providers and TRS providers may require to develop integration solutions, nor the extent to which a solution may be applicable to multiple video conferencing platforms. As ZP notes, "full TRS integration on IVCS may take time and significant collaborative efforts among providers and the stakeholders."[272]

101. We are concerned that mandating integration of VRS with video conferencing services at this early stage in the technological development of the service could stymie experimentation with different technologies. We find that allowing experimentation and innovation, including technical collaboration among stakeholders will result in better integration of VRS, and is therefore consistent with the statutory mandate that TRS services are to be provided to "the extent possible" and in the "most efficient manner."[273]

b. User Validation

102. *Background*. VRS is available only to eligible users, i.e., persons authorized to use VRS pursuant to a registration in the User Database.[274] Ordinarily, a person's status as an eligible VRS user is verified by means of the NANP telephone number from which or to which a call is placed.[275] By contrast, video conference participants typically enter a video conference via the Internet (e.g., by clicking a link provided by the host of a video conference, or entering a URL in a search engine or app) without dialing from a line associated with a telephone number.[276] In further contrast with ordinary telephone calls, the video conference format invites VRS users to connect directly, rather than through their VRS providers. In the *Notice*, the Commission sought comment on how VRS providers can most efficiently and effectively confirm a video conference participant's eligibility for VRS.[277]

103. *Discussion*. Consistent with the requirement for other VRS calls, we require that, when VRS is provided in video conferences, VRS providers must validate eligibility by collecting the user's assigned 10-digit NANP telephone number,[278] even if the number is not technically used to connect to the video conference. For example, the VRS provider may request registered users to enter their VRS telephone number in an application or plug-in that the VRS provider makes available to video conference participants to request a VRS CA.[279] Whatever the process, the VRS provider must verify that the user's telephone number is registered in the User Database before allowing the assigned CA(s) to participate in the call.[280] We encourage video conferencing service providers and VRS providers to collaborate on development of such sign-on procedures.

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[271] *See* Sorenson Comments at 12 ("Each [IVCS] platform requires a unique integration development effort by VRS providers as well as ongoing engineering work to maintain a seamless integration as the platforms themselves develop and change.").

[272] ZP Reply Comments at 9.

[273] 47 U.S.C. § 225(b)(1).

[274] *See* 47 CFR § 64.615(a)(1), (2).

[275] *See id.* § 64.615(a)(1).

[276] While some video conferencing platforms may allow a participant to connect via a voice-only connection, the availability of such a connection for a particular video conference may be at the discretion of the conference host or organizer.

[277] *Notice,* 38 FCC Rcd at 6329, para. 77.

[278] This approach is supported by Sorenson and ZP. *See* Sorenson Comments at 17-19; Sorenson Reply Comments at 7; ZP Reply Comments at 4; Sorenson Request Letter at 3.

[279] *See* Sorenson Comments at 8-11 (describing processes used to verify eligibility of a VRS user on Zoom).

[280] In some instances, our rules allow the provision of VRS to users without validation of the individual user's registration, if authorized by an "enterprise" or "public videophone" registration. 47 CFR § 64.611(a)(6). VRS may be provided in a video conference when such provision of VRS is permitted by the applicable rules.

c. Call Detail Requirements

104. *Background*. To collect compensation from the TRS Fund for a particular call, a VRS provider must submit call detail records (CDRs) to the TRS Fund administrator with the information required by our rules.[281] In the *Notice*, the Commission proposed to require that CDRs submitted by VRS providers identify, as such, video conferences in which VRS is provided on an integrated basis, and sought comment on whether additional modification of the Call Data Rule is necessary to address the provision of integrated VRS in video conferences.[282]

105. *Comments*. No party opposes requiring that CDRs identify, as such, the integrated provision of VRS in a video conference. VRS providers Sorenson and ZP both support the inclusion of the URL or IP address of a video conference, in lieu of a terminating telephone number.[283]

106. *Discussion*. To take account of the distinctive characteristics of and special requirements applicable to video conferencing,[284] we adopt the proposed amendment to the Call Data Rule, requiring that a VRS provider's CDRs identify each video conference in which integrated VRS is provided. We note that IP addresses can be used, in the context of video conferences, to identify the Internet location to which participants all connect[285] and that a conference provider's URL can assist the Fund administrator's oversight of this new application of TRS, by identifying which video conferencing provider is responsible for handling the underlying communication. However, to ensure flexibility in the administration of TRS, the rule we adopt authorizes the TRS Fund administrator to determine, and provide specific guidance to VRS providers regarding, the specific information and format that are needed to indicate that integrated VRS was provided in a video conference and to sufficiently identify the particular video conference involved, taking account of the need to provide an auditable record, as well as any legitimate security or data protection concerns.[286] In this regard, we direct the administrator to collect, and by extension to use, process, store, and maintain, only information—insofar as it may qualify as personally identifiable information—that is directly relevant and necessary to accomplish its specific purpose.[287] If necessary, the administrator may also provide instructions to ensure that providers correctly identify non-

[281] *Id*. § 64.604(c)(5)(iii)(D) (Call Data Rule).

[282] *Notice,* 38 FCC Rcd at 6330, para. 80.

[283] *See* Sorenson Comments at 13-16 (supporting use of URLs to identify video conferences in CDRs); Sorenson Reply Comments at 4-7 (same); ZP Reply Comments at 4 (same); *see also* 47 CFR § 64.604(c)(5)(iii)(D)(*2*)(vi) (requiring that CDRs include "[o]utbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call").

[284] For example, these characteristics and requirements include special criteria for counting CA minutes of use and limitations on the number of CAs that may be assigned to a multi-party video conference. *See infra* Part III.B.3.d-e.

[285] *See* Sorenson Request Letter at 2; 47 CFR § 64.604(c)(5)(iii)(D)(2)(vi).

[286] *See* Sorenson Sept. 20 *Ex Parte* at 7 (noting that IVCS providers may have security or data protection concerns with supplying certain information). For example, the administrator might determine that an IP address is needed to identify the specific Internet location of the video conference, and that the provision of a short-form URL will sufficiently identify the IVCS provider while limiting any security or privacy risk that might result from requiring the submission of a long-form URL. However, we emphasize that, contrary to Sorenson's assertion, this *Second Report and Order* does *not* determine the specific additional or alternative information regarding video conferences that shall be submitted in CDRs. *Cf. id*. at 7 ("The Order would require providers to collect and submit to the TRS Administrator the IVCS platform IP address *and* URL") (emphasis in original). Rather, we rely on the on the TRS Fund administrator to make that determination, based on its expertise and experience.

[287] *See* Office of Management and Budget, To the Heads of Executive Departments and Agencies, Managing Information as a Strategic Resource, Circular A-130, App. II, Section 3(d) (2016).

compensable international video conferences[288] and other instances where, based on the parties involved, the provision of VRS in a video conference is not eligible for TRS Fund compensation.[289]

d. When Compensable Time Starts

107. *Background*. The CDRs submitted by TRS providers must record when compensable call time begins and ends.[290] For an ordinary VRS call, compensable call time usually starts when the called party answers, because at that point the CA is already present. Identifying a start time is not so obvious for video conferences. The CA may not be present when a video conference begins. Further, the need for interpretation in a video conference does not always start as soon as two participants have logged on; for example, both of the first two participants may be signers, or hearing users; and, on some calls, participants may be placed in a "waiting room" before entering the call.[291] In the *Notice*, the Commission proposed that, for video conferences, a VRS provider's TRS minutes of use begin when a VRS CA is connected to a video conference and two or more participants are actively present.[292]

108. *Comments*. Sorenson recommends that compensable time on a video conference should start when the VRS CA enters the video conference.[293] Sorenson also recommends that a VRS provider be compensated for time that a CA spends in a "waiting room," analogizing this to when a VRS user and CA are placed "on hold" during a telephone call.[294]

109. *Discussion*. We adopt a modified version of the proposed rule to facilitate the automatic provision of conversation start times in CDRs, so that a CA does not ordinarily need to make a determination when compensable time begins.[295] Compensable time for a video conference shall begin when a VRS CA enters the video conference, provided that the CA identifies the requesting VRS user within five minutes of entering the video conference.[296] If, within that time, the CA cannot identify the requesting VRS user, or it becomes evident that VRS is not needed,[297] then the call must be identified as

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[288] An ordinary VRS call placed by a registered VRS user temporarily located outside the United States to a party in the United States is not compensable if the VRS user has not first notified their VRS provider of their travel plans. *See* 47 CFR § 64.604(d)(6).

[289] For example, a video conference involving only VRS users does not require a CA to relay the conversation because the participants can sign directly to one another. Such a video conference is not eligible for TRS Fund compensation. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8483, 8487, paras. 10-11 (2019) (*2019 TRS Definition Order*) ("people using the same form of TRS can understand each other without additional help from a relay service").

[290] *See* 47 CFR § 64.604(c)(5)(iii)(D)(*2*)(*iii*).

[291] *See* Sorenson Comments at 17.

[292] *Notice*, 38 FCC Rcd at 6351-54, Appx. B (proposed § 64.604(c)(5)(iii)(E)(*2*)).

[293] Sorenson Comments at 16-17; Sorenson Reply Comments at 9-10; Sorenson Request Letter at 3; Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123, at 2 (filed Jan. 25, 2024) (Sorenson Jan. 25 *Ex Parte*).

[294] *See* Sorenson Jan. 25 *Ex Parte* at 2 (comparing IVCS "waiting rooms" to being placed "on hold" in an audio call); *2011 VRS Call Practices Order*, 26 FCC Rcd at 5567, para. 41 (distinguishing idle calls which must be terminated from calls where the VRS user is place on hold).

[295] *See* 47 CFR § 64.604(c)(5)(iii)(D)(*4*) (requiring the use of an automated record keeping system to capture required call data). The proposed start-time rule would require action by the CA to record the start of compensable time. *See* Sorenson Sept. 20 *Ex Parte* at 3-5.

[296] *See* Sorenson Sept. 20 *Ex Parte* at 4-5 (recommending this change).

[297] The TRS Fund should not support the participation of a CA in a video conference where, e.g., no hearing users log on and all participants communicate using sign language.

non-compensable.

110. At this time, we decline to allow compensation for periods when CAs are in a waiting room before joining a video conference. There is a significant difference between being "on hold" for a voice telephone call and being in a "waiting room" prior to joining a video conference. When a VRS user and CA are "on hold," they are in communication with each other, and the CA is able to interpret any oral announcements or other audio information conveyed by the other party's answering device. In a video conference "waiting room," however, the CA may be the only one "waiting," and even if a registered VRS user is also "waiting," communication between them may not be possible. Further, if announcements by the conference host are conveyed by text (as appears to be the usual case), instead of orally, no VRS interpretation of such announcements is needed.

111. We recognize that the VRS user and CA may not be able to control when they are admitted to a video conference from a waiting room.[298] However, compensation for time in a waiting room, or other pre-conference statuses where the VRS user and CA are unable, or have no need, to communicate, would expend TRS Funds without even the possibility for the provision of interpretation services.

e. CA-Related Issues

112. *Background.* As acknowledged in the *Notice,* there may be a number of situations in which more than one VRS CA potentially may be asked to interpret a video conference.[299] For example: (1) two or more participants may request VRS from different providers in the same video conference; (2) two or more VRS users may each request VRS from the same provider on the same video conference; or (3) the nature of the video conference may be such that a VRS provider determines that more than one CA (i.e., team interpreting) is needed for effective communication. In the *Notice*, the Commission asked whether the TRS rules should apply differently in this respect to a video conference than to a teleconference.[300] The Commission also proposed that, in the ordinary case, if the VRS user who requested service leaves a video conference, or is disconnected, before the session ends, then the billable period has ended and the CA should leave the video conference, and sought comment on what exceptions should be allowed.[301]

113. *Comments.* Sorenson and ZP contend that the Commission should not restrict VRS users' ability, as currently supported, to use their chosen provider on video conference calls.[302] These commenters also recommend that additional compensation should be provided for team interpreting in conference calls, as warranted.[303] Sorenson also urges the Commission to compensate a VRS provider for time that a CA remains in a video conference after the requesting VRS user has left, in the event that there are remaining participants who require ASL interpretation.[304]

114. *CAs from Different Providers*. At this time, we do not prohibit multiple providers from

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[298] If the VRS user and CA attempt to join a call before the host initiates the connection and are then waiting on-line, that time would be considered non-compensable call set-up time.

[299] *Notice*, 38 FCC Rcd at 6330, para. 81.

[300] *Id.* In a multi-party teleconference involving at least one hearing user, our rules do not restrict the number of different TRS providers whose services may be used by various parties to the call.

[301] *Id*. at 6331, para. 84.

[302] Sorenson Comments at 21-22; Sorenson Reply Comments at 8-10; ZP Reply Comments at 5-6; Hamilton Comments at 10; Sorenson Request Letter at 2-3.

[303] Sorenson Comments at 22-26 (explaining situations that warrant team interpreting); ZP Reply Comments at 7-8 (supporting compensation for team interpreting); Sorenson Reply Comments at 16-17.

[304] Sorenson Comments at 27-29; Sorenson Request Letter at 4.

responding to service requests from different users for the same video conference. Implementing such a rule would require logistics and coordination procedures among VRS providers, about which we have no record information or recommendations. However, we note that our rules do not prohibit TRS providers from reaching agreements for the efficient use of CAs. For example, the restrictions on VRS contracting do not preclude a VRS provider from authorizing another VRS provider to provide interpretation service to the first provider's registered users.[305] Thus, VRS providers may arrange for their registered users participating in the same video conference to be served by a single CA as long as there is no double-billing of the TRS Fund for the services of that CA.

115. *Multiple CAs from a Single Provider*. In an audio-only teleconference, where two or more registered VRS users are participating, the TRS Fund supports the provision of a CA for each registered user—with each user's connection through a CA being treated as a separate call because the VRS CAs are connected to the VRS users on separate screens. However, in a video conference with integrated VRS, unlike a teleconference, it is possible for all participants to be served by one CA from the same VRS provider. To prevent unnecessary, redundant provision of interpreting by the *same* VRS provider, and to limit the risk of waste, fraud, and abuse, we require that, when a VRS provider receives two requests for VRS for a single video conference, the VRS provider shall only bill the TRS Fund for VRS provided to the first requesting user.[306] If a CA joins a video conferencing call and detects that a VRS CA from the same VRS provider is already present on the call, the later-in-time CA should terminate participation in the call, and no separate CDR shall be submitted to seek compensation for that CA's presence on the call.[307] To facilitate implementation of this practice, we require that VRS CAs identify themselves as such in a video conference, including the name of their VRS employer. CAs may identify themselves for this purpose by indicating in their display name that they are an interpreter and identifying the VRS provider with which they are affiliated.[308]

116. *Team Interpreting*. Under our rules, VRS providers are not prohibited from assigning an additional CA to a particular VRS call, if deemed necessary. However, no additional compensation is paid for the second CA.[309] We recognize that video conferences often involve longer conversations with more complex interaction among multiple participants.[310] The current record does not enable us to formulate a bright-line rule defining the circumstances, if any, that warrant TRS Fund compensation for the addition of a second CA, nor an appropriate rate of compensation for team interpreting. Therefore, we seek additional comment in the *Further Notice* regarding the circumstances, if any, under which TRS Fund compensation should be permitted for team interpreting in a video conference, as well as what compensation should be provided.

117. *Extending Service to Accommodate Remaining Users*. We adopt the Commission's proposal that, in the ordinary case, if the VRS user who requested service leaves a video conference, or is disconnected, before the session ends, then the billable period has ended and the CA should leave the

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[305] *See* 47 CFR § 64.604(d)(1)(iii)(A).

[306] *See* US Telecom Comments at 2 (urging Commission to manage the TRS Fund in a fiscally responsible manner).

[307] In certain situations, the two VRS CAs may not immediately know which is the "later-in-time." Communication between the two CAs may be possible, in which case they can decide who drops off, or VRS providers may want to establish their own protocols for which CA drops off in this situation.

[308] *See* Sorenson Sept. 20 *Ex Parte* at 2-3 (recommending this change).

[309] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, 38 FCC Rcd 9157, 9207-08, paras. 133-35 (2023) (*2023 VRS Compensation Order and Further Notice*) (seeking comment on allowing additional compensation when a certified deaf interpreter is added to a VRS call).

[310] *See* Sorenson Comments at 22-26 (citing call length and call complexity as reasons for team interpreting); ZP Reply Comments at 7-8 (same).

video conference.[311] As an exception, we allow the continuation of TRS Fund-supported service to a video conference after the initiating user drops off, provided that a registered VRS user who remains in the video conference has made a request for service.[312] (In addition, at least one non-signing user must remain on the call.) In implementing this exception, VRS providers may choose to include in their software for managing service to video conferences the capability to hold in reserve any extra service requests from video conference participants that were not fulfilled when made because another participant already requested VRS for the conference. By holding an additional request in reserve, it can be automatically fulfilled if the first-in-line requester leaves the conference early. If there are no requests held in reserve, and the CA is aware that other sign language users may remain in the video conference, the CA may delay exiting the conference for up to five minutes of additional compensable time, to allow a new (replacement) registered user to request service. Upon verification of the new registered user, the CA (or a replacement) may continue service to the video conference beyond the five-minute grace period. We require that the second registered VRS user's telephone number be included in the call data submitted for compensation. We direct the TRS Fund administrator to provide appropriate guidance to VRS providers on how an extension of service, in response to a remaining participant's request, should be reflected in the CDRs submitted by a provider in support of compensation requests.[313]

118. Sorenson raises a concern that its current system for responding to requests for integrated VRS does not allow a new request for VRS to be made until the initial CA has disconnected from the video conference.[314] As a result, any Sorenson users remaining in a video conference after the first requesting user drops off would not be able to request service during the five-minute period allowed for that purpose.[315] The current record is insufficient to allow us to assess the nature and extent of such limitations and fully consider the possible alternatives for addressing Sorenson's concerns. In the *Further Notice of Proposed Rulemaking*, we seek additional comment on this issue. In addition, we note that Sorenson may request relief pursuant to the Commission's waiver process.[316]

119. We are not persuaded that a VRS provider should continue to receive TRS Fund compensation for extended service to ASL users who are not registered VRS users, as Sorenson recommends.[317] Our TRS program is premised on service to individuals who meet the eligibility criteria of section 225 and our implementing rules.[318] Further, allowing compensation for service to users who are not confirmed as eligible by a TRS provider may result in longer wait times for relay service requested by eligible users on other calls.

120. *Call Takeover Issues*. We do not modify our current rule requiring that VRS CAs stay

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[311] *See Notice,* 38 FCC Rcd at 6331, para. 84. In the context of an ordinary VRS call or conference call, if the TRS user is voluntarily or involuntarily disconnected from the call, he or she must initiate another call with a new CA.

[312] *See* ZP Reply Comments at 6-7 (supporting allowing a VRS CA to remain in a video conference after the initiating VRS user drops off, when other registered VRS users remain).

[313] This rule only applies when two registered VRS users initiate an invitation to the same conference call through the same VRS provider.

[314] Sorenson Sept. 20 *Ex Parte* at 5.

[315] *Id*.

[316] *See* 47 CFR § 1.3.

[317] Sorenson Comments at 27-29; Sorenson Sept. 20 *Ex Parte* at 5-7.

[318] *See, e.g., 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, 8648-49, paras. 65-66 (2013) (*2013 VRS Reform Order*) (establishing the User Database), *aff'd in part and vacated in part, Sorenson Communications, LLC v. FCC*, 765 F.3d 37 (2014).

on a call for a minimum of 10 minutes before being replaced by another CA.[319] At this time, we also decline commenters' recommendation to allow additional compensation for the presence of multiple CAs if the replacement CA enters the call early to observe or acquire background information before taking over the first CA's duties.[320] The record does not clearly demonstrate to what extent there is a material difference between call takeovers in a video conference and call takeovers in an ordinary telephone call or teleconference of comparable duration, such that our rules should allow extra compensation for transitional observation periods. If further experience warrants, the Commission may revisit this issue in a future proceeding.

121. *Automatic CDR Recording; Compliance Reports*. Our rules require that call detail, including the start and end of conversation time, be recorded automatically.[321] Given that the rules we adopt require CAs to make certain determinations—e.g., as to when they must exit a video conference because none of the remaining participants has requested VRS—we amend our rules to provide that the generation of a CDR based on a CA's exit from a video conference in accordance with our rules does not violate the automatic recording rule. To assist in review and auditing of compensation payments, we require VRS providers to include in their annual compliance reports a detailed explanation of the guidance they provide to CAs regarding when compensable time starts and stops, in the various circumstances discussed above.[322]

f. Privacy Screen Rule

122. *Background*. Our current rules, which were adopted before video conferencing became widespread, prohibit a VRS CA from enabling a visual privacy screen or similar feature during a VRS call and require the CA to disconnect a VRS call if the caller or called party enables a visual privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes.[323] A "visual privacy screen" is defined as "[a] screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call."[324] The rule's original purpose was to stop "illicit schemes that result in calls 'running' without any communication between the parties for the sole purpose of fraudulently billing the Fund."[325] In the *Notice*, the Commission recognized that in a multi-party video conference, participants may turn off their video cameras for various reasons wholly unrelated to the reason for the rule.[326] Therefore, the

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[319] *See* 47 CFR § 64.604(a)(1)(v); *Notice*, 38 FCC Rcd at 6331, para. 85; Sorenson Comments at 28 (recommending retention of the 10-minute rule).

[320] *See* Sorenson Comments at 26; ZP Reply Comments at 8. Paying for, e.g., an additional two minutes of overlap would add approximately $8 to $15 to the cost of a call each time a new CA takes over. *See 2023 VRS Compensation Order and Further Notice*, 38 FCC Rcd at 9201, para. 114, Table 3 (adopting per-minute rates for small VRS providers of $7.77, and $6.27 (first 1 million monthly minutes) and $3.92 (monthly minutes above 1 million) for larger providers). There could be four or five takeover CAs during an hour-long video conference.

[321] *See* 47 CFR § 64.604(c)(5)(iii)(D)(*4*)(*i*); *see also Notice*, 38 FCC Rcd at 6330, para. 80 (seeking comment on compliance with the automatic CDR rule in the video conferencing context).

[322] *See* 47 CFR § 64.606(g) ("Internet-based TRS providers . . . shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with § 64.604."); *id.* § 64.606(g)(3)(v) (requiring VRS providers to include in compliance reports "[a] description of all policies and practices that the provider is following to prevent waste, fraud, and abuse of the TRS Fund."); *see also id.* § 64.604(c)(5)(iii)(D)(*6*) (TRS providers must submit to audits and produce relevant documentation so the auditor may "examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments").

[323] *See id.* § 64.604(d)(5).

[324] *Id.* § 64.601(a)(53).

[325] *2011 VRS Call Practices Order,* 26 FCC Rcd at 5567, para. 40.

[326] *See Notice,* 38 FCC Rcd at 6332, para. 88; Sorenson Comments at 32-34; ZP Reply Comments at 3.

Commission proposed to amend the rule to allow more flexibility in the activation of cameras when VRS is provided in a video conference on an integrated basis.[327] The Commission also waived the privacy screen rule, in part, pending the outcome of this rulemaking.[328]

123. *Discussion*. We adopt the proposed amendment to the privacy screen rule. The record supports the Commission's assumption that in multi-party video conferences, there are a variety of reasons why VRS users and CAs, like other participants, may turn off their videos without any fraudulent intent, and without thereby indicating lack of interest or engagement in the video conference. For example, in some video conferences, the host may request that all participants turn off their videos unless speaking, to make it easier for participants who are deaf to view a sign language interpreter.[329] Further, in a video conference where one or more participants are speaking at length, participants who are deaf may (like other participants) choose to turn off their videos until it is their turn to speak.

124. Our revised privacy screen rule allows VRS CAs to continue providing relay services integrated with a multi-party video conference when the VRS user who requested service has turned off his or her video connection for more than five minutes, as long as at least one other party is continuing to speak and the VRS user is still connected to the video conference. If five minutes elapse in which no party on a multi-party video conference is responsive or engaged in conversation, the VRS CA shall follow the current procedure, i.e., announce that VRS will be terminated and leave the video conference. The amended rule also allows VRS CAs to turn off their video connections when not actively relaying a conversation, e.g., with another VRS CA as a team on a multi-party video conference.[330] Finally, we adopt our proposed definition of "multi-party video conference" as a video conference with three or more participants, excluding VRS CAs and any other participant providing an accommodation for a participant.[331]

4. Integrating Other Types of TRS with Video Conferencing

125. *Background*. In the *Notice*, the Commission sought comment on the need to facilitate the integration of non-VRS types of TRS with video conferencing and on the existence and progress of any efforts to develop technology to enable such integration.[332] Limited comments were received on this issue.[333] At this time, we adopt certain rules, discussed below, for application to non-VRS TRS, to the extent that IP CTS providers have developed methods of providing this service on an integrated basis. However, the record is insufficient to resolve some issues, and we seek additional comment on those in the *Further Notice*.[334]

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[327] *Notice,* 38 FCC Rcd at 6332, paras. 87-89.

[328] *Privacy Screen Waiver Order*, 38 FCC Rcd at 6339-41, paras. 113-19; *see also Access to Video Conferencing; Implementation of Section 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,* CG Docket Nos. 23-161, 10-213, and 03-123, Order, DA 24-545 (June 10, 2024) (extending the privacy screen waiver).

[329] Sorenson Petition at 4-5.

[330] Although the TRS Fund does not currently provide additional compensation for team interpreting, our rules do not prohibit team interpreting in video conferences. *See supra* para. 116; *see also infra* paras. 179-83 (seeking comment on appropriate criteria for the payment of additional compensation for team interpreting).

[331] *See Notice,* 38 FCC Rcd at 6332, para. 89.

[332] *Id.* at 6332-33, para. 90.

[333] *See, e.g.*, Hamilton Comments at 3-7; Sorenson Comments at 44; ClearCaptions Comments at 4-5 (FCC should require a standard interface on IVCS platforms for IP CTS users to connect to captioning); CEA Comments at 20 (FCC should require integration of IP CTS and IP Relay with video conferencing services).

[334] *See infra* paras. 192-98.

a. IP CTS

126. *Background.* Currently, registered IP CTS users can use IP CTS with video conferencing on a non-integrated basis. For example, a video conferencing participant can access IP CTS captioning when a telephone connection to the video conference is available.[335] In this configuration, IP CTS captions are only visible to the requesting user—and may require a separate screen.[336] However, captioning is currently available as a native feature on some IVCS platforms, with captions displayed on the same screen as the video conference. Further, in Part III.A above, we amend Part 14 of our rules to expressly require that IVCS providers make captioning available on their video conferencing platforms (unless that is not achievable). In addition, our Part 14 amendments require IVCS providers to enable the connection of IVCS users to third-party captioning services (including IP CTS providers) and to display such captions on the user's video conference screen (unless these requirements are not achievable).[337] Some people with hearing loss may prefer to use third-party captions produced by an IP CTS provider rather than those provided by the IVCS provider or a fee-based captioning service.[338]

127. *Comments*. Hamilton supports authorizing the integrated provision of IP CTS but notes there are a number of unresolved technical and policy issues regarding integration of IP CTS with video conferences.[339] Sorenson (provider of CaptionCall IP CTS) recommends that we not adopt rules governing integration of IP CTS into video conferencing platforms at this time, pending the results of voluntary collaboration between IP CTS providers and video conferencing platforms.[340]

128. With multiple captioning options already available, the extent of the need for integrated provision of IP CTS (i.e., so that captions are displayed on the IP CTS user's video conference screen) is currently unclear. Consistent with our determination that the TRS Fund can support the provision of TRS in video conferences, we *allow* IP CTS providers to seek compensation for providing video conference captioning on an integrated basis, in compliance with our current TRS rules.[341] However, we do not require IP CTS providers to do so.[342] In the *Further Notice,* we seek further comment on whether amendments to our rules are needed to facilitate the integrated provision of IP CTS while preventing waste, fraud, and abuse.

129. *IP Relay.* T-Mobile, the only provider of IP Relay, did not offer any specific

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[335] Hamilton Comments at 3-4.

[336] Further, in this configuration, a human captioner cannot see the video conference participants. *See id*. at 4. Hamilton reports that its WebCapTel relay service allows IP CTS captions to appear on the same screen with the video participants. *Id.* at 3.

[337] *See* CEA Comments at 7-8 (noting difficulty of monitoring captions on a separate screen from the video conference).

[338] Hamilton Comments at 9-10.

[339] *Id.* at 5-6 (discussing technical and policy issues for the integration of IP CTS into video conferencing services—for example, how to avoid competing IP CTS captioning in the same conference call; whether non-IP CTS registrants should have the benefit of captioning).

[340] *See* Sorenson Comments at 44.

[341] IP CTS providers that seek compensation for providing captioning in video conferences on an integrated basis may use the same billing and CDR guidelines discussed above for VRS. *See supra* para. 106. *See* Hamilton Comments at 9 (IP CTS users should have access to their preferred provider).

[342] On the other hand, the existing Part 14 ACS rules prohibit IVCS providers from impeding the use of third-party captioning services by call participants. *See* 47 CFR § 14.20(a)(4) ("Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability.").

recommendations regarding the use of IP Relay on video conferencing calls,[343] and we did not receive any such recommendations from other parties.[344] In the *Further Notice*, we seek further comment on whether there is a need for integrated provision of IP Relay in video conferences, and if so, what regulatory changes may be needed to facilitate such integration and prevent waste, fraud, and abuse.

5. Rules Applicable to All TRS

130. In the *Notice*, we sought comment on proposed rules that would be applicable to VRS and any other form of TRS that is integrated with video conferencing services.[345] We adopt several generally applicable rules, as discussed below.

a. Confidentiality

131. *Background*. Section 225 of the Act requires the Commission to "prescribe regulations to implement this section, including . . . regulations that prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call."[346] The confidentiality provision of our TRS rules largely repeats this statutory text, providing that "[e]xcept as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and … from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law."[347] Some features of video conferences are not explicitly addressed by this rule. For example, a CA may become aware of "sidebar" conversations between two or more video conference participants (whether in speech or sign language), which the CA concludes are not intended to be communicated to other participants. Or a CA may review the text of "chat" conversations or PowerPoints and other presentation material shared among participants, even though this information may not be orally recited or discussed and thus may not be relayed by the CA.[348] Such content may not be covered by the current rule. The Commission proposed to amend the TRS confidentiality rule to ensure that such information is treated as confidential.[349] The Commission also proposed to amend the confidentiality rule to codify the Commission's prior rulings indicating that the rule expressly applies to TRS providers as well as to CAs.[350]

132. *Comments*. The Electronic Privacy Information Center and Sorenson support these proposals, and no commenter opposes them[351]—although CTA expresses a general concern that, in light

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[343] *See* T-Mobile Reply Comments at 2-4 (recommending formation of an industry group to consider issues related to integration of TRS with video conferencing).

[344] CEA recommended integration of all forms of TRS with video conferences including IP Relay. CEA Comments at 20.

[345] *See Notice*, 38 FCC Rcd at 6334-36, paras. 95-102.

[346] 47 U.S.C. § 225(d)(1), (1)(F).

[347] 47 CFR § 64.604(a)(2)(i). There is a limited exception for Speech-to-Speech CAs: "STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if they want the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls." *Id.*

[348] We note that Mike Calvo of Pneuma Solutions (Express Comment, Aug. 8. 2023) described a product called "Scribe For Meetings" that "provides an accessible HTML version of a slide presentation that the user can then read using a screen-reader, Braille display, or screen magnification software on PCs and mobile devices."

[349] *See Notice,* 38 FCC Rcd at 6334-35, paras. 96-98.

[350] *See id.*

[351] *See* EPIC Comments at 4; Sorenson Request Letter at 3-4. EPIC also asks us to clarify that VRS providers may not retain video transcripts of calls to use in training AI programs. EPIC Comments at 2-3. Our TRS confidentiality

(continued….)

of the TRS confidentiality rule, the integration of TRS with video conferencing could inadvertently "cut off" video conferencing features such as "open captioning, recording and cloud-stored transcripts."[352]

133. *Discussion*. As proposed, we amend the TRS confidentiality rule[353] to expressly prohibit CAs from disclosing non-relayed content (as described above) communicated in a video conference or from maintaining records of such content beyond the duration of the video conference. The amended rule prohibits a TRS provider and its CAs from disclosing "sidebar" conversations, chat, presentation material, and other content that may be observed by a CA, and requires TRS providers and CAs to destroy any notes or records of such content upon termination of the call.[354] We also amend the confidentiality rule to codify the Commission's prior rulings indicating that the rule expressly applies to TRS providers as well as to CAs, so that the rule explicitly covers TRS calls (including but not limited to video conferences) where TRS is provided without the involvement of a CA.[355]

134. As with ordinary telephone calls, video conference participants typically have an expectation that, unless the circumstances indicate otherwise, the content of their communications will not be disclosed to non-participants.[356] Further, section 225 of the Act specifically mandates that the confidentiality of relayed conversations be protected, highlighting the paramount importance of privacy for TRS users.[357] TRS providers and their CAs are invited into the communication process for the sole purpose of enabling people with hearing and speech disabilities to participate in telephonic conversations in a functionally equivalent manner.[358] They are not authorized to be sources of information about the conversations they facilitate, except in narrowly defined circumstances.[359]

135. Our expansion of the rule to cover non-relayed content observed by a CA reflects that, unlike an ordinary telephone call, the multimedia nature of a video conference may expose a CA to textual or other non-aural information shared among some or all participants, as to which they may have a legitimate expectation of privacy. Although the rule that section 225 of the Act expressly *directs* us to

(Continued from previous page)
rule already prohibits TRS providers from "keeping records of the content of any conversation beyond the duration of a call." 47 CFR § 64.604(a)(2). We will investigate any alleged violation of this rule if brought to our attention through the complaint process.

[352] CTA Comments at 11.

[353] 47 CFR § 64.604(a)(2).

[354] For example, if a CA keeps notes during a call of, *e.g.*, names, specialized vocabulary, etc., such notes must be destroyed at the end of the call.

[355] *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13-24 and 01-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5832, para. 60 (2018) (IP CTS providers relying on Automatic Speech Recognition (ASR), rather than CAs, must adhere to TRS confidentiality rule); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568, 4572, para. 8 (CGB 2020) (ASR-only IP CTS provider must maintain confidentiality of calls).

[356] *See* 47 U.S.C. § 605(a) (prohibition on unauthorized disclosure of wire and radio communications).

[357] *See id.* § 225(d)(1)(F).

[358] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, 19 FCC Rcd 12475, 12534-35, paras. 154-55 (2004) (describing limited role of TRS CA as a "transparent conduit between two people communicating through disparate modes").

[359] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers,* CG Docket N0. 03-123, CC Docket No. 98-67, and WC Docket No. 05-96, Second Report and Order and Order On Reconsideration, 24 FCC Rcd 791, 799-800, para. 17 & n.73 (2008) (VRS CAs may report background auditory and visual information to emergency responders).

adopt only covers "the content of any relayed conversation," this specific direction is part of a general direction to the Commission to "prescribe regulations to implement this section."[360] We do not interpret section 225 as precluding the Commission from modifying its confidentiality rule to cover additional information to which TRS CAs may be exposed in the course of their work.

136. We emphasize that the TRS confidentiality rule only applies to TRS CAs and TRS providers (i.e., entities seeking compensation from the TRS Fund).[361] Neither IVCS providers nor the participants in a video conference (other than CAs) are subject to the rule. Therefore, we find no basis for concern that expanding the scope of the rule as described above would somehow curb participants ability to use "common and legitimate video conferencing features" such as open captioning, recording and cloud-stored transcripts."[362] As far as the TRS rules are concerned, IVCS providers and video conference participants remain free to provide and use captioning and recording features, or disclose information to non-participants, subject to whatever restrictions may apply under other laws.

b. Exclusivity Agreements

137. We adopt the Commission's proposal to prohibit exclusivity agreements between TRS providers and video conferencing providers.[363] This rule was recommended by the DAC,[364] and no party opposes it.[365] In general, an exclusivity agreement is an express or implied agreement between a TRS provider and a video conferencing provider that has the purpose or effect of preventing other providers from offering similar services to consumers.[366] As we stated in the *Notice,* exclusivity agreements may deprive consumers of the opportunity to rely on their chosen TRS provider when using video conferencing services, contrary to the Commission's policy.[367] Similarly, such exclusivity agreements may restrict the ability of conference hosts and TRS users to select a preferred video conferencing provider.

138. Although the Notice also sought comment on addressing arrangements that create *de facto* exclusivity but do not constitute express or implied exclusivity agreements,[368] the record is insufficient for us to do so. However, we stress that our Part 14 rules prohibit IVCS providers from installing network features, functions, or capabilities that impede accessibility or usability.[369] Although the application of this rule to network features, functions, and capabilities is determined on a case-by-case basis, we emphasize that software applications that are installed, e.g., to enable IVCS users to request a VRS CA, must not impede the ability of users to request service from their preferred provider.

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[360] 47 U.S.C. § 225(d)(1), (1)(F).

[361] *See* 47 CFR § 64.604(a)(2)(i).

[362] CTA Comments at 11.

[363] *See Notice*, 38 FCC Rcd at 6335, para. 99.

[364] DAC Video Conferencing Report at 5.

[365] *See* Hamilton Comments at 8-9 (supporting proposal).

[366] *See, e.g.*, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007) (banning exclusive service contracts between cable operators and MDUs).

[367] *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, 32 FCC Rcd 5891, 5908-10, paras. 34-36 (2017) (*2017 VRS Compensation Order*), *aff'd sub nom. Sorenson Communications, LLC v. FCC*, 897 F.3d 214 (2018); *2013 VRS Reform Order*, 28 FCC Rcd at 8699, para. 200.

[368] *See Notice,* 38 FCC Rcd at 6335, para. 99.

[369] 47 CFR § 14.20(a)(4).

c. Scheduling the Provision of TRS

139. *Background.* In the *Notice*, the Commission took note that video conferencing can function as a substitute for in-person meetings as well as teleconferences, and that many employers, educational institutions, health care providers, government agencies, and other entities currently provide ASL interpreting, captioning and other accommodations—either voluntarily or to fulfill obligations under the Americans with Disabilities Act or other laws.[370] In these contexts, dedicated ASL interpreters, captioners, and others may be trained and gain experience in a specific subject matter and may have the opportunity to prepare in advance for a scheduled meeting or class. The Commission sought comment on the implications of this for the provision of TRS. The Commission also asked how the Commission can ensure that the use of TRS in video conferences does not detract from the effective implementation of ADA and other legal requirements. In particular, the Commission sought comment on a tentative conclusion that TRS providers must continue to decline requests to reserve a TRS CA in advance of a scheduled video conference.[371]

140. *Comments*. Hamilton Relay and T-Mobile encourage the Commission to explore whether and how Remote Conference Captioning (RCC), a CART service that is scheduled in advance, could be used to provide IP CTS in video conferences.[372] T-Mobile explains that RCC "provides high-quality captioning,"[373] combining "real-time captioning and voice relay service through an internet connection, and leverages a fully customizable transcript window that maximizes user choice and accessibility."[374] Convo, however, opposes the scheduled use of VRS in video conferences.[375] Sorenson does not advocate advance scheduling, but urges the Commission to permit VRS providers, when responding to a service request for a video conference, to assign a video-conferencing specialist CA, rather than the first available CA.[376] According to Sorenson, VRS CAs require specific training "in navigating the specific video conferencing platforms and functionality, such as using the chat and multi-pinning features[, which] are different on each platform, and it is not economical or practical for VRS providers to train their entire interpreter workforce on these platform-specific skills."[377]

141. *Discussion*. We adopt the tentative conclusion in the *Notice* that TRS providers must continue to decline requests to reserve a TRS CA in advance of a scheduled video conference.[378] The Commission has long held that the role of TRS is to be available for calls consumers choose to make, when they choose to make them, i.e., to be the "dial tone" for a call that requires assistance for effective communication.[379] For this reason, the Commission requires TRS providers to handle service requests in

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[370] *Notice,* 38 FCC Rcd at 6335-36, para. 100.

[371] *Id.* at 6336, para. 102.

[372] Hamilton Comments at 12-13; T-Mobile Reply Comments at 4-5. RCC is a service that allows a conference call host or organizer to obtain captioning service for a virtual audio or video conference, using Communication Access Real-Time Translation (CART) service, a stenographer-based captioning service. The captioner connects to the audio of a call and produces a text of the conversation. Users can access the captioning stream over the Internet on a separate screen during an audio call or the same screen during a video call.

[373] T-Mobile Reply Comments at 5.

[374] *Id.* at 4.

[375] Convo Comments at 9.

[376] *See* Sorenson Comments at 30-32; Sorenson Request Letter at 4-5.

[377] Sorenson Request Letter at 4; ZP Reply Comments at 5 (agreeing with Sorenson's position). *But see* Convo Comments at 9 (supporting continued prohibition on scheduling calls in the context of a pilot program).

[378] *Notice,* 38 FCC Rcd at 6336, para. 102.

[379] *See 2000 TRS Order*, 15 FCC Rcd at 5165-66, para. 60; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20176, para. 96 (2007); *Telecommunications Relay Services and*

(continued….)

the order in which they are received, in accordance with "speed-of-answer" standards.[380] As a consequence, the Commission has found that the practice of permitting TRS users to reserve in advance a time at which a CA will handle a call is inconsistent with the nature of TRS and the functional equivalency mandate.[381] The provision of ASL interpreting, captioning, and other assistance by prior reservation is a different kind of service, which is available from other sources, such as VRI and CART service providers.[382] Commenters urging us to modify the rule against advance scheduling do not provide persuasive reasons why such a change is necessary, given the availability of non-TRS services.

142. At this time, we also decline to authorize VRS providers to assign a specialized CA to handle a video conference, rather than assigning the first available CA, as is currently required.[383] Based on the current record, we are not persuaded that every video conference call will be so complex as to require specially trained CAs. Further, Sorenson's proposal raises substantial concerns about speed of answer[384] and how the quality of TRS provided for ordinary telephone calls would be affected, were we to adopt a rule authorizing CAs with special training —who likely would be among the most talented and experienced TRS CAs—to be assigned specifically to the provision of video conferences. We seek additional comment on this proposal in the *Further Notice of Proposed Rulemaking*.[385]

C. Amendment of the Commission's Rules for TRS Calls with Multiple CAs

143. *Background*. Section 64.604(c)(14) of the Commission's rules was adopted in 2014 to codify existing practices whereby compensation was paid for the use of multiple CAs to handle certain types of calls.[386] The rule states that compensation is authorized for the provision of multiple CAs to

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Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, 1469, para. 8 (CGB 2005).

[380] *See 2000 TRS Order*, 15 FCC Rcd at 5165-66, paras. 60-63; 47 CFR § 64.604(b)(2).

[381] *FCC Clarifies that Certain TRS Marketing and Call Handling Practices are Improper and Reminds that VRS May Not Be Used as a Video Remote Interpreting Service*, CG Docket Nos. 98-67, 03-123, Public Notice, 20 FCC Rcd 1471 (2005) (*2005 Call Handling PN*).

[382] LanguageLine suggests that the first-come, first-served rule for TRS will somehow interfere with language access to various services mandated by the federal government. LanguageLine Comments at 1. The first-come, first-served rule only applies to TRS CAs responding to requests for TRS. The rule does not apply outside that context. The general accessibility of federal programs will not be affected in any new or comprehensive way by this determination.

[383] *See 2005 Call Handling PN*, 20 FCC Rcd at 1473 ("Providers must handle incoming calls in the order that they are received."); *2013 VRS Reform Order*, 28 FCC Rcd at 8691, para. 180 n.470 (same).

[384] *See 2000 TRS Order*, 15 FCC Rcd at 5165-66, para. 60 ("For a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our [speed-of-answer] rule that delays a customer's ability to place a call through the relay center clearly compromises the functional equivalence of relay service.").

[385] We also note that there is Commission precedent indicating that the Commission's rules allow the assignment of VRS calls to CAs based on the technical capability of the equipment at a CA station, as opposed to the skills of a particular CA. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing & Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10714-15, para. 40 (2014); *see also* Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 23-161, 10-213, and 03-123 (filed Sept. 25, 2024). This *Second Report and Order* does not overrule prior precedent or alter the Commission's current rules in this regard.

[386] *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of ITRS Mandatory Minimum Standards*, CG Docket No. 03-123, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10718-19, para. 49 & n.189 (2014) (*Multiple Relay Calls Order* or *TRS Definition Further Notice*).

handle TRS calls between two or more users of captioned telephone service—CTS or IP CTS[387]—and for calls between a captioned telephone service user and a user of TTY-based TRS or VRS.[388] Subsequently, the Commission amended the definition of "telecommunications relay service" to reflect the statutory definition of that term as amended by the CVAA.[389] The amended definition provides that TRS enables functionally equivalent communication between "an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability" and "one or more individuals."[390] The Commission explained that the revised definition "will allow compensation from the TRS Fund for relay calls involving two or more persons using different forms of relay services, including calls whose handling may require more than one CA."[391] However, in adopting the amended definition of TRS, the Commission did not modify the multiple-CA rule to reflect its stated intent regarding compensation for calls handled by multiple CAs. As a result, some categories of calls that qualify as TRS under the amended statutory definition and that may warrant multiple CAs, are not currently addressed by the multiple-CA rule.[392] In the *Notice*, the Commission proposed to amend this rule to address these gaps to harmonize this rule with the current definition of TRS.[393]

144. We adopt the proposed amendment to the multiple-CA rule, which states that compensation may be paid for more than one CA to handle, among other categories, "[c]alls between users of different types of relay services where more than one CA is warranted."[394] This amendment, supported by Sorenson,[395] and unopposed by any commenter, broadens the scope of the rule to more fully reflect the Commission's stated intent in adopting the amended definition of TRS. We also clarify that, for purposes of this rule, "CA" can refer to an automated CA equivalent, such as an ASR program used to provide ASR-only IP CTS.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

145. In this *Further Notice of Proposed Rulemaking* (*Further Notice*), we seek additional comment on certain unresolved issues raised in the initial *Notice* and comments thereon, concerning the accessibility of IVCS and the use of TRS with video conferencing.

A. Part 14 Issues

146. In the *Second Report and Order*, we adopt certain new or modified performance

[387] 47 CFR § 64.604(c)(14)(i).

[388] *Id.* § 64.604(c)(14)(ii), (iii).

[389] *See 2019 TRS Definition Order*, 34 FCC Rcd at 8487, para. 10.

[390] 47 CFR § 64.601(a)(43); *see also* 47 U.S.C. § 225(a)(3); CVAA, § 103(a). Before enactment of the CVAA, TRS was defined as enabling functionally equivalent communication between "an individual who has a hearing impairment or speech impairment" and "an individual who does *not* have a hearing impairment or speech impairment." 47 U.S.C. § 225(a)(3) (2009) (emphasis added).

[391] *TRS Definition Further Notice*, 29 FCC Rcd at 10725, para. 65; *see also id*. at 10725, para. 64 (citing the legislative history of the CVAA); *TRS Definition Order*, 34 FCC Rcd at 8487, para. 10 (explaining that by revising the definition of TRS, the Commission "formally confirm[s] what our program administration already recognizes in practice—that in some instances, achieving communication between two individuals who have speech or hearing disabilities requires more than one type of relay service").

[392] For example, the current rule does not address when the use of two CAs is appropriate for calls between users of IP Relay and other forms of TRS.

[393] *Notice*, 38 FCC Rcd at 6337-38, paras. 108-11.

[394] Section 64.604(c)(14)(i) remains necessary to allow compensation for calls between users of the same captioning service. *See Multiple Relay Calls Order*, 29 FCC Rcd at 10718-19, para. 49.

[395] *See* Sorenson Comments at 26-27 (supporting proposed amendment).

objectives that are needed to define the outcomes needed for IVCS accessibility.[396] In this *Further Notice*, we seek additional comment on whether to adopt certain performance objectives proposed in the *Notice* or in comments on the *Notice*, for which the current record is insufficient to enable a full assessment.

147. Given the emergence of video conferencing as a basic communication vehicle for all Americans,[397] and the inconsistent implementation of accessibility to date in the video conferencing environment,[398] we seek to assess whether additional, more specific performance objectives are needed for ensuring accessibility and usability in the specific context of IVCS. Like all the performance objectives currently included in Part 14 of our rules, these performance objectives, if adopted, would further define what "accessible" and "usable" mean in the IVCS context. IVCS service providers and manufacturers would be required to meet these objectives to the extent that they are achievable.[399] However, we also seek to ensure that any additional IVCS performance objectives we adopt are relevant to various types of IVCS and are currently achievable by at least some IVCS providers. We seek to avoid limiting the incentives and opportunities for innovative design in this rapidly developing industry sector,[400] or adopting rules so specific as to constitute *de facto* mandatory technical standards.[401] In this regard, we note that section 14.20(b)(1) of our rules requires ACS providers and manufacturers to "consider performance objectives set forth in section 14.21 at the design stage as early as possible."[402] In some instances, adopting more specific performance objectives may help focus the accessibility design processes of IVCS providers on solutions that are most likely to be relevant, effective, and achievable.[403] In other instances, more specific performance objectives might unnecessarily constrain design choices.

148. Regarding each of the proposals discussed below, we seek further comment on the specific benefits and costs of the proposal, including: How would the proposed performance objective promote accessibility of IVCS for people with disabilities? Is the relevant accessibility problem is already sufficiently addressed by the more general performance objectives set forth in the existing rules? Is the proposed performance objective likely to be achievable for at least some IVCS providers? For example, are there commercially available products or services that would meet the performance objective?[404] Would the proposed performance objective unduly constrain the design of video

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[396] *See supra* Part III.A.4.

[397] *See supra* paras. 18-19.

[398] *See supra* paras. 20-25.

[399] *See* 47 CFR § 14.20(a)(1), (2) (requiring manufacturers and service providers to ensure that equipment and software is accessible and usable "unless [these requirements] are not achievable"); *see also id*. § 14.20(a)(3) ("If accessibility is not achievable either by building it in or by using third party accessibility solutions available to the consumer at nominal cost and that individuals with disabilities can access, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless the requirements of this subsection are not achievable.").

[400] *See* CTA Comments at 10.

[401] 47 U.S.C. § 617(e)(1)(D) (prohibiting the Commission from mandating technical standards, except as a safe harbor); *see also* CTA Reply Comments at 4-5.

[402] 47 CFR § 14.20(b)(1).

[403] *See, e.g., supra* para. 31 (explaining that modifying a performance objective to specify captioning capability serves to clarify the existing performance objective specifying that auditory information be available "through at least one mode in visual form").

[404] *See Notice*, 38 FCC Rcd at 6325, para. 62 (noting that, while all Part 14 performance objectives are conditional on achievability, the Commission "can better assess the likely benefits of our proposals if there is evidence as to whether or not a performance objective is likely to be achievable, for at least some covered entities, within the foreseeable future"). We emphasize that commercial availability, or lack thereof, is not dispositive of whether a performance objective is likely to be achievable. However, it may be relevant, along with other information, to a

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conferencing platforms and services—and if so, how, specifically would it do so?

149. We also seek comment on whether each proposed performance objective is relevant and applicable to all IVCS, or only certain subcategories of IVCS? As noted in the *2023 Video Conferencing Order*, the IVCS subcategory encompasses a wide variety of video communication services.[405] Some, like Zoom, Google Meet, Microsoft Teams, or Facebook Messenger, are globally popular platforms with millions of active daily users. Others, like Discord, Signal, or Slack, have smaller customer bases and may cater to more targeted audiences. Some video conferencing applications are designed primarily for one-to-one video calling,[406] including dating apps like Tinder, Bumble, and Hinge. Some of the proposed performance objectives may not be relevant on such platforms. The relevance of certain kinds of accessibility solutions also may vary depending on the type of device used to access a video conference.[407] In determining whether to adopt a specific performance objective, to what extent should we consider its relevance and applicability to a wide range of video conferencing services?[408] We also invite commenters to submit information about the range of video conferencing services currently offered or under development and how they currently address accessibility. For example, are there video conferencing platforms that exclusively offer one-on-one communication, without the ability to allow group calls? Are there platforms that operate exclusively on particular kinds of devices, such as mobile phones?

150. In addition to these general questions, which apply to all the Part 14 proposals discussed herein, we seek comment on certain aspects of individual proposals and particular accessibility issues, as discussed below.

1. Addressing Speech Disabilities

151. In the *Notice*, the Commission proposed to amend section 14.21(b)(1)(ix) of its rules, which specifies that ACS be operable in "at least one mode that does not require user speech,"[409] by adding the further specification stating: "For interoperable video conferencing services, provide at least text-to-speech functionality."

152. We seek further comment on whether a more specific performance objective is needed to ensure accessibility for people with speech disabilities, if achievable.[410] The record reflects that there is

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preliminary assessment of the overall likelihood that a performance objective can be accomplished by at least some IVCS providers "with reasonable effort or expense." 47 CFR § 14.10(b) (defining "achievable").

[405] *2023 Video Conferencing Order*, 38 FCC Rcd at 6313-14, para. 29.

[406] For example, Slack's "Huddles" feature allows for video conference calls, but the free version of the service limits the call to two participants. *See* Slack help center, https://slack.com/help/articles/4402059015315-Use-huddles-in-Slack (last visited July 25, 2024).

[407] *See* CTA Reply Comments at 6 (noting that "different participants in the video conferencing ecosystem control different elements of the user experience and interface").

[408] *See id.* at 6 (noting that some performance objectives proposed by commenters "appear to assume multi-point connectivity, when some services, by design, only offer one-to-one video conferencing"); *see also id.* at 7 n.23 (noting that "[m]any IVCS products do not interconnect with the public switched telephone network (PSTN), include an audio-only option (i.e., no video), or include text/messaging capabilities" and cautioning against the imposition of objectives that would require an IVCS provider to add such capabilities).

[409] *Notice*, 38 FCC Rcd at 6321, para. 54; 47 CFR § 14.21(b)(1)(ix) ("*Operable without speech*. Provide at least one mode that does not require user speech.").

[410] *See* AAO Apr. 30 *Ex Parte* at 3 (asking the Commission to require the ability for people with speech disabilities "to access both text-to-speech functionality and automated speech recognition functionalities that are specially designed to generate understandable speech for these individuals"); VoiceItt Comments at 5 (stating "[t]echnology levels the playing field for Americans with disabilities, and new regulations can reflect this technological reality by
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more than one mode in which IVCS can potentially be made accessible for people with speech disabilities, for example, by providing text-to-speech functionality, or providing speech-to-speech functionality. Regarding the latter solution, the record indicates that ASR technology has been applied to develop products that automatically convert speech that is difficult to understand to speech that is more understandable.[411] In addition, we note that enabling a connection to VRS or other sign language interpretation services can also address accessibility for people with speech disabilities who also know ASL. We seek further comment on whether to modify this rule to specify text-to-speech functionality, speech-to-speech functionality, or both.

153. To what extent are text-to-speech and speech-to-speech products and services commercially available and widely used by people with speech disabilities?[412] What are the potential benefits and costs of implementing text-to-speech and speech-to-speech functionality? How can such products or services be integrated with videoconferencing platforms? How do text-to-speech and speech-to-speech functionalities compare, as accessibility solutions?

2. Sign Language Interpretation

154. We seek further comment on whether additional specificity is needed in the performance objective for sign language interpretation adopted in the *Second Report and Order*, which states:

> 14.21(b)(4) In addition to the other requirements of this section, interoperable video conferencing services and covered equipment and software used with such services shall:
>
> (i) Enable the use of sign language interpretation provided by third parties, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language interpretation.[413]

In its comments, Sign-Speak argues that this performance objective should not merely specify that IVCS "enable the use" of sign language interpretation, but actually "provide" it (or more specifically, provide ASL interpretation).[414]

155. We seek further comment on the need for and feasibility of Sign-Speak's proposal. If VRS and video remote interpreting (VRI) are generally available to IVCS users on an integrated basis, pursuant to the rules adopted in the *Second Report and Order*, to what extent would there be a need for IVCS providers to also provide sign language interpretation? Would such a performance objective likely be achievable for IVCS providers, e.g., by using automated sign language interpretation software? While ASR speech-to-text technology has been in development since 1952[415] and has seen widespread commercial adoption across various sectors, automatic sign language interpretation is a nascent technology. To what extent has the accuracy and reliability of automatic sign-language interpretation

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mandating that IVCS systems ensure integration of and compatibility with ASR engines capable of making the speech of people with nonstandard or atypical speech comprehensible to others on video conference calls").

[411] VoiceItt Comments.

[412] CTA Comments at 11.

[413] *See infra* Appendix B.

[414] Sign-Speak Comments at 1.

[415] *See* U.S. Legal Support, History of ASR Technologies (Aug. 31, 2023), https://www.uslegalsupport.com/blog/asr-history/.

been established?[416]

3. User Control of Accessibility Features

156. In the *Second Report and Order*, recognizing that user control of features is often necessary for accessibility, we adopt a new performance objective specifying the provision of:

> 14.21(b)(4) In addition to the other requirements of this section, interoperable video conferencing services and covered equipment and software used with such services shall:
>
> (i) provide user interface control functions that permit users to activate and adjust the display of captions, speakers, and signers, and other features for which user interface control is necessary for accessibility.[417]

157. Some commenters sought a more detailed performance objective that would list the specific aspects of captions, participant windows, and other features that must be subject to user control. For example, CEA recommends that we specify that users be able to "customize the appearance of captions, including options for font size, font edges (i.e., outline, shadow, etc. to work without background) color and background (color and transparency level)."[418]

158. The performance objective adopted in the *Second Report and Order* requires IVCS providers to allow video conference participants to independently alter the font, size, location, color, and opacity of the captions and caption backgrounds appearing on the participant's screen. It also requires, where relevant, participant access to pinning and multi-pinning, spotlighting, and video window reconfiguration features.[419] We seek comment on whether additional user-control performance objectives are necessary to further ensure accessibility of IVCS.

159. AFB recommends that IVCS performance objectives should explicitly address the need for screen-reader verbosity controls.[420] We note that the performance objective we adopt in the *Second Report and Order* specifies that users be able to activate and adjust "features for which user interface control is necessary for accessibility."[421] Thus, verbosity controls, among other user controls, are included in the performance objective to the extent that they are necessary for accessibility. We seek additional comment on the particular aspects of screen-reader verbosity control that are most important in the video conference setting, and any other considerations that we should take account of in framing a performance objective that specifically addresses verbosity control.

160. CEA also suggests that IVCS users' accessibility preferences should be stored and retained within the IVCS platform, so users will not have to change the settings each time they use the service.[422] To what extent is this capability necessary for accessibility? Are there technical challenges to implementing such a feature? If so, what, and how severe, are those challenges? Should the settings be tied to the video conferencing service, or to the type of device used to access it? For example, should accessibility settings on a mobile version of an IVCS platform be retained when accessing the platform's web application?

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[416] *See, e.g.*, CTA Reply Comments at 7 ("automatic speech, sign language and visual information are all still very much in the experimentation and developmental phase.").

[417] *See supra* para. 53.

[418] CEA Comments at 27 (Appx. A).

[419] *See supra*, paras. 57-61.

[420] AFB Comments at 2.

[421] *See* Appendix B (Final Rules).

[422] CEA Comments at 40 (Appx. A).

4. Other Accessibility Proposals

161. CEA recommends performance objectives specifying that IVCS provide a "gallery view mode" and "ensure that a sufficient number of videos is supported without degrading the quality of the video or audio."[423] We seek comment on these proposals. In what respect are such performance objectives necessary for accessibility? What variables, if any, could impact the quality of a user's video or audio if a user elects to have numerous video windows displayed? What variables, if any, could impact an IVCS provider's ability to provide high-quality videos?

162. CEA also suggests a performance objective requiring that video functionality, screen sharing, video window re-sizing, and video sharing be compatible with tablets.[424] CEA states that the performance objective can be achieved by designing the IVCS user interface to be tablet-friendly, *i.e.*, able to adapt between different screen sizes and allow for multi-touch gestures and split-screen multitasking.[425] In its reply comments, CTA objects to this proposal, contending that tablet compatibility represents a *de facto* technical mandate.[426] As stated in the *Second Report and Order*,[427] we do not mandate that any particular IVCS must be able to be used on a tablet. However, we recognize that many IVCS providers choose to make their products available on tablets. Accordingly, we seek comment on whether to adopt a performance objective specifying that, where IVCS is available on tablets, it provide the functionalities described in CEA's proposal. Would provision of the functionalities CEA describes, pose unusually difficult design or technical challenges? To what degree do current IVCS offerings provide such device-specific functionality? Should the Commission consider device-specific performance objectives?

163. We also seek further comment on CEA's proposal to require IVCS providers to offer dedicated text and video side channels.[428] According to CEA, these additional channels are necessary to facilitate communication between sign language interpreters and sign language users, and between multiple interpreters in "team interpreting" scenarios.[429] CTA objects to this proposal, countering that some IVCS platforms do not offer text-based communication, and requiring them to do so would constitute a technical mandate and an economic burden. Additionally, CTA contends that because side channels are only tangentially related to the video conference call itself, the absence of those channels should not affect compliance with the video conferencing rules.[430] We seek comment on these arguments, as well as comments on the need for and feasibility of CEA's proposal.

5. Accessibility for People Who Are Blind or Have Low Vision

164. *Audio Description and Visual Image Description*. Part 14 of our rules currently includes a following generally applicable performance objective addressing the availability of visual information for people who are blind or have low vision:

> ***Availability of visual information.*** Provide visual information through at least one mode in auditory form.[431]

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[423] *Id.* at 33-34 (Appx. A).

[424] *Id.* at 35 (Appx. A).

[425] *Id.*.

[426] CTA Reply Comments at 5-6.

[427] *Supra* para. 69.

[428] CEA Comments at 37-38 (Appx. A).

[429] *Id.*

[430] CTA Reply Comments at 7.

[431] 47 CFR § 14.21(b)(2)(i).

165. We seek comment on whether to amend this performance objective to specify the provision of audio description and visual image descriptive functionality, as well as compatibility with third-party visual image descriptive services.[432] The term *audio description* refers to a feature that is required for some television and other video programming pursuant to the Commission's Part 79 rules.[433] Under those rules, an audio description of a program's key visual elements must be inserted into natural pauses in the program's dialogue.[434] The term "visual image description" refers to a related feature, described by a commenter as "functionality that generates real-time descriptions of visual information for people who are blind or low vision."[435] We seek comment on the extent to which these terms refer to different functions in the context of IVCS.

166. Additionally, we seek comment on other ways that relevant visual information could be provided in auditory form. Is the provision of audio description of video and visual images implicit in the existing performance objective? Would a rule directly specifying the provision of audio description or visual image description, or both, be helpful as a way of clarifying IVCS provider's obligations under the existing rule? To what extent should we mandate compatibility with third-party description services, such as AIRA and Be My Eyes, if at all? To what extent are third-party description services currently being used in conjunction with IVCS, if at all?

167. We also seek comment on the scope of visual information that should be provided through audio description in IVCS. Section 14.21(b)(2) currently provides that it covers "[a]ll information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues."[436] Does section 14.21(b)(2) sufficiently describe the kinds of visual information that an IVCS provider is or should be required to make available in auditory form, or should we amend it to provide greater clarity? For example, should we adopt AFB's recommendation to add "shared documents," to the list of information that must be made accessible?[437] Should shared videos be included?[438] Should coverage of shared documents or videos be affected by the extent to which a video conferencing service enables such sharing of visual information by participants?

168. We also seek comment on the potential costs and benefits of integrating video description and visual image description into IVCS platforms. Are audio description and visual image descriptive third-party services commercially available? What are the technical or financial challenges, if any, of integrating these services? How would conference call participants access this function?[439]

169. *Tactile Mode*. ACB and AFB also request that performance objectives be adopted or amended to provide that IVCS (and other types of ACS) be operable and visual information be available in tactile mode.[440] Rule 14.21(b)(1)(i) currently states that, to be accessible, the input, control, and mechanical functions advanced communications services, equipment and software must:

> Provide *at least one mode* that does not require user vision.[441]

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[432] *See* ACB Comments at 3; CCD-TTTF Comments at 3; AAO Apr. 30 *Ex Parte* at 3.

[433] 47 CFR § 79.3(a)(3).

[434] *Id.*

[435] AAO Apr. 30 *Ex Parte* at 3.

[436] 47 CFR § 14.21(b)(2).

[437] *See* AFB Comments at 2.

[438] *See* Bridge Comments at 2.

[439] To access audio description, a viewer of television programming will generally switch from the main program audio to a secondary audio stream. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-43, 35 FCC Rcd 12577-78, para. 2 (2020).

[440] ACB Comments at 1; AFB Comments at 2.

AFB urges that we modify this performance objective to read: "Provide *auditory and tactile modes* that do not require user vision."[442]

170. In addition, Rule 14.21(b)(2)(i) states that, to be accessible, advanced communications services, equipment and software must:

> Provide visual information through at least one mode in auditory form.[443]

AFB urges that we modify this performance objective to read: "Provide visual information *in both auditory and tactile forms*."[444]

171. These changes would make clearer what is required to make IVCS (and other types of ACS) accessible to people who are deafblind or who otherwise require that controls and information be accessed tactilely. We seek comment on the benefits and costs of these proposed changes, including specific examples of how they would improve the accessibility of covered services and the equipment and software used to access them.

6. Accessibility for People with Cognitive and Mobility Disabilities

172. We seek comment on whether more specific performance objectives are needed to address the challenges people with cognitive and mobility disabilities face when attempting to access video conferencing services.[445]

173. *Cognitive Disabilities*. Currently, the performance objectives set forth in section 14.21 of our rules include a performance objective specifying that IVCS should "[p]rovide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user."[446] AAO urges the Commission to adopt a more specific performance objective specifying the provision of "a simplified secure modality for initiating, authenticating and interfacing with a video conferencing session."[447] What would such a feature entail, and what is its likely cost?

174. We also seek comment on AAO's recommendation to adopt a usability-related performance objective for people with cognitive disabilities, specifying the provision of "plain and simple language and iconography on instructional materials on how to activate a video conferencing session,"[448] to supplement the current, more general usability objective specifies that people with disabilities "have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities."[449] We invite commenters to submit examples of instruction manuals, tutorials, or guides for other products and services that have been produced for people with cognitive disabilities.

175. *Usability Generally*. We also seek comment on whether any other amendments to the usability provision of the rules, section 14.21(c), are needed to ensure that people with disabilities have access to the "full functionality and documentation" for IVCS, including "instructions, product

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[441] 47 CFR § 14.21(b)(1)(i) (emphasis added).

[442] AFB Comments at 2.

[443] 47 CFR § 14.21(b)(2)(i) (emphasis added).

[444] AFB Comments at 2.

[445] *See supra* para. 29 (discussing general performance objectives that address mobility and cognitive disabilities).

[446] 47 CFR § 14.21(b)(1)(x).

[447] AAO Apr. 30 *Ex Parte* at 3.

[448] *Id. See, e.g.,* https://www.fcc.gov/cognitive-disabilities (last visited Sept. 25, 2024).

[449] 47 CFR § 14.21(c) (defining "usable").

information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities."[450]

176. *Mobility Disabilities*. Currently, Part 14 prescribes several performance objectives specifying that ACS be operable in various ways by users with mobility disabilities.[451] We seek comment on whether any more specific performance objectives are needed to ensure that people with mobility disabilities can access and use IVCS. For example, AAO recommends that IVCS user controls be accessible via voice activation or other hands-free technologies.[452] We seek further comment on the likely costs and benefits of such a requirement. Is this performance objective likely to be achievable independently of the devices available to the user? For example, could an IVCS provider develop or purchase a voice-activation application for its user controls that is compatible with commonly used user devices (*e.g.*, smartphones, tablets, and PCs), and make it available for downloading at no charge, or a nominal charge?[453] What would be the likely cost of such a solution? Alternatively, could an IVCS provider ensure that its service is compatible with existing peripheral devices or specialized customer premises equipment offering voice activation?[454]

7. Application to Covered Equipment and Software

177. We seek comment on whether additional amendments to our Part 14 rules are needed to ensure the accessibility of equipment and software that is used to provide or use IVCS. Under section 716 of the Act and our implementing rules, manufacturers of "equipment used for advanced communications services, including end user equipment, network equipment, and software," are required to "ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless [these requirements] are not achievable."[455] Accordingly, manufacturers of equipment used for IVCS are required to ensure that their equipment and software meets the performance objectives of section 14.21 of our rules, except to the extent that is not achievable.

178. What kinds of equipment- and software-related challenges do people with disabilities currently face in using end-user equipment and software to access and use IVCS? Are such challenges sufficiently addressed by the current Part 14 rules? Are there specific performance objectives that are uniquely or peculiarly applicable to such equipment and software (as opposed to services), such that we should amend section 14.21 to include them, to ensure the accessibility of such equipment and software?

B. TRS Rules (Part 64)

1. VRS – Team Interpreting and Other CA-Related Issues

179. We seek further comment on whether to authorize the TRS Fund to support team interpreting by two VRS CAs from the same provider participating simultaneously in a video conference, and on what criteria should be applied for allowing such additional support.[456] In the *Second Report and*

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[450] *Id.*

[451] *Id.* § 14.21(b)(1)(v) ("Provide at least one mode that does not require user fine motor control or simultaneous actions."); *d.* § 14.21(b)(1)(vi) ("Provide at least one mode that is operable with user limited reach and strength."); *Id.* § 14.21(b)(1)(vii) ("Controls shall be operable without requiring body contact or close body proximity.").

[452] AAO Apr. 30 *Ex Parte* at 3.

[453] *See* 47 U.S.C. § 617(b)(2)(B) (providing ACS providers flexibility to achieve accessibility by "using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access").

[454] *See* 47 CFR §§ 14.20(a)(3), 14.21(d).

[455] *See id.* § 14.20(a)(1); *see also* 47 U.S.C. § 617(b)(1).

[456] *See Notice,* 38 FCC Rcd at 6331, para. 83. Under the current rules, providers are free to provide team interpreting as they deem necessary, but are only compensated for a single CA per call. *But see 2023 VRS*

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Order, we find the record insufficient to formulate a bright-line rule providing objective criteria for application by providers and the administrator. While guidelines for professional interpreters issued by RID reference a number of factors, those factors are stated in very general terms, leaving much room for subjective or discretionary judgment in their application.[457] We believe it would be preferable to adopt a bright-line rule in this area, as advocated by Sorenson.[458] Both Sorenson and ZP assert that the duration and complexity of a call are two important factors in determining when team interpreting is needed, but no commenter proposes specific, bright-line criteria for assessing these or other relevant factors.[459]

180. With respect to the considerations that may support team interpreting, there appear to be significant differences between VRS and traditional community interpreting. With community interpreting, which is arranged by appointment, there is usually advance knowledge of the likely duration and complexity of an assignment. In addition, the assigned interpreter(s) cannot be quickly replaced, if that proves necessary, after a meeting has begun. Therefore, a community interpreting agency usually needs to determine in advance, based on the likely duration and complexity of the assignment, how many interpreters may be needed, and commit the time of those interpreters for the duration. By contrast, with VRS, CAs can be added, as needed, to a call or video conference whose duration is not known in advance. We seek comment on these assumptions and how they should affect our selection of criteria for authorizing team interpreting in VRS.

181. In light of the above assumptions, would the duration of a video conference, standing alone, ever justify assignment of a second VRS CA to be present simultaneously with the first, regardless of the complexity of the video conference? For example, for a video conference with only two participants, would team interpreting ever be warranted, given that the CA can easily be replaced on a long-duration call?

182. To address call complexity, if we allow team interpreting, should we set a minimum number of participants that must be present in a video conference, to warrant compensation for a second simultaneous VRS CA?[460] If so, what number should that be? Alternatively, should we require a minimum number of registered VRS users—or of hearing individuals, or both? For video conferences with the requisite number of users, should we also set a minimum period of time that should elapse before a second VRS CA is added?[461] For example, should we set 10 minutes,[462] 30 minutes,[463] or another period as the minimum threshold for adding a second simultaneous CA to a call?

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Compensation Order and Further Notice, 38 FCC Rcd at 9207-08, paras. 133-35 (seeking comment on whether additional compensation should be available when a certified deaf interpreter is added to a VRS call).

[457] *See* The Registry for Interpreters for the Deaf (RID), *Team Interpreting,* Standard Practice Paper, https://nvrc.org/wp-content/uploads/2011/07/Team_Interpreting_SPP.pdf (last visited May 16, 2023) (*RID Standard Practice Paper*). RID references: (1) the length and complexity of the assignment; (2) unique needs of the persons being served; (3) physical and emotional dynamics of the setting; and (4) avoidance of repetitive stress injuries for interpreters.

[458] Sorenson Comments at 25.

[459] *See id.* at 22-26; ZP Reply Comments at 7-8; *see also* LinguabeeLearn, "What is team interpreting and when is it needed?" (Nov. 5, 2019), https://learn.linguabee.com/what-is-team-interpreting-and-when-is-a-team-needed/.

[460] *See* Sorenson Comments at 25 (identifying call complexity as an important factor and noting that the number of participants is one factor contributing to call complexity).

[461] *See id.* at 23-25 (identifying call length as an important factor); ZP Reply Comments at 7 (noting that video conferences typically last longer than ordinary VRS calls).

[462] *See* 47 CFR § 64.604(a)(1)(v) (a VRS CA assigned to a call must stay with the call for a minimum of 10 minutes, unless the call ends earlier).

[463] Sorenson Comments at 23 ("in Sorenson's experience, IVCS calls are on average *seven times* longer than VRS telephone calls"). Sorenson also cites research suggesting that "a significant loss of accuracy occurs after

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183. Are there other indicia of complexity that lend themselves to a bright-line rule addressing compensation for an additional CA? What call scenarios might be better served by having two CAs remain on the call taking turns, rather than having a brand new CA enter the call to relieve the current CA? Complexity of subject matter may be a significant factor influencing whether there is a need for two simultaneous CAs; but the subject matter of a video conference will not be known to the VRS provider or the CA before it starts. Are there objective factors that could be used to define the complexity of the subject matter, and which, after a call begins, could be communicated by the CA (without violating the Commission's TRS confidentiality rule) to indicate to the provider that team interpreting is warranted for the video conference?

184. We also seek comment on whether the TRS Fund should provide compensation for the assignment of additional VRS CAs when video conferences are split into breakout groups.[464] We seek comment on the extent to which these scenarios are likely to occur, and whether they would justify a special rule. We also seek comment on how to most effectively address such scenarios. For example, should we modify the rule adopted in the *Second Report and Order*—which allows a VRS provider to respond to only one service request for a video conference (until the first requester drops off)— to allow additional CA(s) to be assigned if a second VRS user (or more) so requests after ending up in a breakout room without a CA? How should the provision of additional service to a breakout room be documented in CDRs submitted to the TRS Fund administrator? And, how would a second VRS CA find out which room to join?

185. Finally, we seek comment on whether to amend our rules (1) to provide more specific guidance on how a video conference participant who is a registered VRS user may request VRS (if the initially requesting VRS user has disconnected) and (2) to enable a participant to request the assignment of an additional CA (should the user find the number of CAs on the call insufficient for effective communication). The rules adopted in the *Second Report and Order* allow a registered VRS user to request that VRS be extended if the requesting user drops off; however, Sorenson asserts that its system for automatically processing requests for VRS in video conferences does not allow such a request while a CA is already serving the video conference. Are there alternative, non-automated means by which such requests could be efficiently made and fulfilled, without causing a significant risk of waste, fraud, and abuse? Could such a method be adapted to enable a participant to request the assignment of an additional CA to a complex video conference?

2. VRS – Use of Specialized CAs in Video Conferences

186. We seek further comment on whether to amend our rules to permit VRS providers to assign the provision of integrated VRS in video conferences to CAs that have been specially trained to handle video conferences, rather than to the first available CA, as is otherwise required. In the *Second*

(Continued from previous page)
approximately thirty minutes of interpretation due to mental fatigue." *Id.* at 23-24, citing Barbara Moser-Mercer et al., *Prolonged Turns in Interpreting: Effects on Quality, Physiological and Psychological Stress (Pilot Study)*, 3 INTERPRETING 47, 47 (1998), https://doi.org/10.1075/intp.3.1.03mos. Sorenson also notes that "ASL interpretation has an additional physical demand that is especially pronounced during long calls." Sorenson Comments at 24, citing RID, *Self-Care for Interpreters: Prevention and Care of Repetitive Strain Injuries*, Standard Practice Paper at 1 (updated 2007), https://nwasla.com/wp-content/uploads/2019/02/Self-Care_SPP.pdf ("RID RSI Standard Practice Paper") (describing how "[t]he inherent nature of interpreting puts interpreters, young and old, at high risk for developing some type of [Repetitive Strain Injury] during their career."); J.D. Stedt, *Interpreter's Wrist – Repetitive Stress Injury and Carpal Tunnel Syndrome in Sign Language Interpreters*, 137 AM. ANN. DEAF (1992), https://pubmed.ncbi.nlm.nih.gov/1605099/ (finding that 87.5% of interpreters sampled suffered from some form of repetitive stress injury); *Sign Language Interpreters at High Ergonomic Risk*, ROCHESTER INST. OF TECH. (Apr. 19, 2008), https://www.sciencedaily.com/releases/2008/04/080417105449.htm (finding that ASL interpretation is one of the highest-risk professions for ergonomic injury).

[464] *See* Sorenson Comments at 28.

Report and Order, we find the current record insufficient to support such a rule,[465] noting that not every video conference may be sufficiently complex to require a specially trained CA, and that speed of answer, as well as the quality of TRS provided for traditional telephone calls could be affected if we were to authorize the assignment of specially trained CAs from a select group to handle the provision of VRS in video conferences.[466]

187. Sorenson contends that assigning video conferences to specialist CAs will provide a more functionally equivalent experience for VRS users participating in video conferences because those CAs will be trained on the mechanics and features of various video conferencing platforms, and so, will be able to more quickly and efficiently interpret for the VRS user.[467] Sorenson adds that specially trained CAs would be proficient in interpreting in large group settings as well as navigating the accessibility features of each specific IVCS platform, and that it would not be feasible to train every CA on these factors.[468] ZP agrees, stating: "Handling VRS calls in a video conference setting requires CAs to possess specific skills, such as the ability to manage multiple users in a video conference and familiarity with various IVCS features and functionalities."[469]

188. We seek additional comment on Sorenson's proposal. Currently, all VRS calls must be answered in the order received—a requirement that is intended to ensure that VRS providers do not discriminate against, or in favor of, particular VRS users.[470] We recognize that the assignment of CAs who are specially trained to handle video conferences could raise the quality of VRS provided in video conferences. On the other hand, it seems reasonable to assume that, in general, CAs who qualify for assignment to video conferences are also likely to have above-average skills and experience in handling and interpreting for traditional telephone calls. We seek comment on this assumption. We also seek comment on the specific challenges of video conferences that require special training for CAs? Do all types of video conferences present such challenges, or only those video conferences with many participants? How would the benefits of improving service quality for video conferences compare with the potential harm resulting from removal of highly qualified CAs from the queue for voice calls? What steps could the Commission take to minimize such potential harm? To limit such potential harm, should the Commission require that specially trained CAs participate in both call queues, so that they can be available to interpret for voice-only calls when not needed for a video conference? What other steps could the Commission take to limit potential harm to service quality for traditional voice calls?

189. Further, if only a limited number of CAs are trained to handle video conferences, what impact would such a limitation have on the speed of answer for video conferences? What percentage of VRS minutes do providers estimate will involve video conferences, and what percentage of CAs would need to receive special training to avoid a significant decline in average speed-of-answer for video conferences, relative to traditional telephone calls?[471] To avoid excessive delays, should the Commission require that a minimum number or percentage of CAs be trained to handle video conferences?

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[465] *See supra* para. 142.

[466] *See* Sorenson Comments at 30-32; Sorenson Sept. 20 *Ex Parte* at 8.

[467] Sorenson Sept. 20 *Ex Parte* at 8. The AAO also support VRS providers having "a dedicated pool of interpreters familiar with video conferencing platforms." AAO May 7 *Ex Parte* at 2.

[468] Sorenson Comments at 30-31.

[469] ZP Reply Comments at 5.

[470] *2013 VRS Reform Order*, 28 FCC Rcd at 8691, para. 180 n.470; *2005 Call Handling PN*, 20 FCC Rcd at 1473.

[471] Our speed-of-answer rule for VRS is substantially less strict than the rule for other relay services. For most forms of TRS, providers must answer 85% of all calls within 10 seconds, measured daily. 47 CFR § 64.604(b)(2)(ii). For VRS, by contrast, providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis. *Id*. § 64.604(b)(2)(iii). However, service-quality competition among providers generally has resulted in a substantially lower average delay in answering VRS calls.

190. We also seek comment on the specific amount of training that is necessary to ensure acceptable service quality for video conferences. What is the estimated cost of such training, on a per-CA basis? What would be the cost of training all of a provider's CAs to handle video conferences?

191. Finally, we note that there is some likelihood that, over time, the use of VRS in video conferences may increase to a substantial percentage of total VRS minutes. If the Commission were to authorize the use of a specialist CA queue for video conferences, should it do so as a pilot program with a sunset date, to ensure that the impact of this practice and the need for it to continue can be assessed before deciding whether to adopt a more permanent rule?

3. Integrated Provision of IP CTS

192. *IP CTS.* IP CTS is currently available for use in video conferences where participants can connect by dialing a telephone number. In the *Second Report and Order*, we amend our Part 14 rules to provide that, unless it is not achievable to do so, IVCS providers "shall enable users to connect with third-party captioning services"—a category that includes IP CTS—"so that captions provided by such services appear on the requesting user's video conference screen."[472] We also affirm that the TRS Fund supports the provision of TRS—including IP CTS—in video conferences on an integrated basis, as long as the service is provided in compliance with our TRS rules. We seek comment on whether additional amendments to our rules are needed to facilitate the integrated provision of IP CTS on a video conferencing platform, that is, to participants who do not connect to a video conference by dialing a telephone number, and to prevent waste, fraud, or abuse of the TRS Fund.

193. As a preliminary matter, we seek comment on the extent to which IP CTS is currently used in video conferences, as well as the extent of demand and additional benefits likely to result from its availability on an integrated basis.[473] There are a number of captioning solutions that are now or may soon be available in the video conferencing context for people with hearing loss, including captions provided by the IVCS provider, CART and other fee-based captioning services, and captioning applications provided by various large and small technology companies.[474] We seek comment on the extent of additional demand and additional benefits likely to result from the availability of integrated IP CTS in video conferences. What factors would lead a video conference participant to request integrated IP CTS captions when the IVCS platform offers native captioning and participants can view captioning from another source on their own screen? To what extent do video conference participants who need captioning currently use IP CTS rather than other sources of captioning, and to what extent would they be likely to use integrated IP CTS, if available? If a video conference participant invites IP CTS captioning on an integrated basis to the call, will participants be able to control the size, font, and placement of the captions? Should we adopt any other restrictions on the use of integrated IP CTS captions to prevent waste, fraud, and abuse?

194. *Call Detail Requirements*. We seek comment on whether any amendments to the current

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[472] *See supra* paras. 38-44.

[473] In this regard, we note that IP CTS must be requested by a registered IP CTS user. 47 CFR § 64.611(j)(1)(i). It may be that a video conference host or organizer seeking to make captioning available could perceive IP CTS as a desirable alternative to other sources of captioning in some circumstances, e.g., for reasons related to quality or cost. However, in contrast with VRS, for which our rules authorize "enterprise" registration, whereby VRS may be provided to an organization for use by eligible employees or other users, *id*. § 64.611(a)(6), "enterprise" registration is not authorized for IP CTS, except for certain specified entities. *See id*. § 64.611(j)(2)(iii) (allowing service to unregistered users at a temporary, public IP CTS device set up in an emergency shelter); *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, paras. 491-94 (July 22, 2024) (adopting enterprise registration rules for IP CTS and IP Relay provided in carceral facilities).

[474] *See supra* paras. 38-44.

call detail requirements of the Commission's rules are necessary to facilitate review and approval of compensation requests for the provision of IP CTS in video conferences on an integrated basis.[475]

195. *Limits on Duplicative IP CTS Captioning*. To prevent billing of the TRS Fund for duplicative captioning, we propose to adopt a similar rule to that adopted for VRS in the *Second Report and Order*. Specifically, we propose that, if the captions supplied by an IP CTS provider can be viewed by all video conference participants (rather than only by the individual who requested captioning from an IP CTS provider), then the provider shall not submit more than one call detail record (CDR) for that video conference and shall not be paid for more than one instance of captioning to that video conference. In other words, the total compensation received by a single IP CTS provider for captioning a video conference would not exceed the applicable compensation rate multiplied by the number of minutes in the video conference. We seek comment on this proposal. We also seek comment on whether to allow compensation for the provision of IP CTS in a video conference to an individual registered user, on a non-integrated basis, if the provider is already providing IP CTS to all participants on an integrated basis, at the request of another registered user. Further, are there any circumstances in which more than one IP CTS provider is needed to provide integrated IP CTS captioning in a video conference? If not, how can we prevent duplicative captioning?

4. Integration of Other Forms of TRS

196. *Analog TRS.* We seek further comment on whether and how the Commission should amend its rules to facilitate the provision in video conferences of non-Internet-based TRS—Text Telephone (TTY)-based TRS, Captioned Telephone Service (CTS), and Speech-to-Speech Relay (STS).[476] These services, offered through state TRS programs, are intended for use on an ordinary telephone line. While users of these services may be able to participate in a video conference call over a voice connection (where available), it is unclear whether or how these forms of TRS could be integrated with video conferencing platforms. Further, given the availability of IP CTS, which provides the functionality of CTS and TTY-based TRS for users with Internet access, it seems unlikely that there would be significant demand for integrated provision of these services in Internet-based video conferences. We seek comment on this assessment.

197. *IP Relay.* No comments were received in response to the questions in the *Notice* concerning the integration provision of IP Relay in video conferences. IP Relay is a service often used with refreshable braille devices and screen readers and by the deafblind community.[477] Would integration of IP Relay with video conferencing service platforms improve the ability of these or other consumers to participate in video conferencing calls? Are there other steps we should take to facilitate an IP Relay user's participation in video conferences? We seek comment on these issues and any rule changes that may be necessary to facilitate the integration provision of IP Relay video conferencing platforms.

198. *Advancing Equity, Diversity, and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,[478] including people of color, persons with disabilities, persons who

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[475] *See*, *e.g.*, 47 CFR § 64.604(c)(5)(iii)(D).

[476] For TTY-based TRS a user calls a relay center and types the number to be called. The CA makes the telephone call and then relays the call between the parties by speaking what a text user types, and typing what a voice telephone user speaks. For STS, a CA (who is specially trained in understanding a variety of speech disorders) repeats what the caller says in a manner that makes the caller's words clear and understandable to the called party. CTS is similar to IP CTS, with captions being provided over the telephone network instead of the Internet.

[477] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation,* CG Docket No. 03-123 and RM-11820, Report and Order, 37 FCC Rcd 8009, 8014-15, para. 13 (2022).

[478] 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

(continued….)

live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[479] 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

199. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[480] 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.[481] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes and policy contained in this *Second Report and Order* on small entities. The FRFA is set forth in Appendix C.

200. The Commission seeks comment on potential rule and policy changes contained in the *Further Notice of Proposed Rulemaking (Notice)*, and accordingly, has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

201. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Second Report and Order and Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).[482]

202. *Paperwork Reduction Act Analysis.* The *Second Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[483] It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.[484] OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,[485] we previously sought specific comment

(Continued from previous page)
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.

[479] 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).

[480] The RFA, 5 U.S.C. §§ 601-602, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[481] 5 U.S.C. §§ 603, 605(b).

[482] *Id*. § 801(a)(1)(A).

[483] Pub. L. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[484] 44 U.S.C. § 3507(d).

[485] Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In Appendix C, we have assessed the effects of the required collection of information on these small entities.

203. *Initial Paperwork Reduction Act of 1995 Analysis*. The *Further Notice of Proposed Rulemaking* may contain new or modified information collection(s) subject to the PRA.[486] If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[487] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[488]

204. *Comments*. Interested parties may file comments on or before the dates indicated on the first page of this document.[489] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[490]

- 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.

205. *Ex Parte Rules*. The proceeding the *Further Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[491] 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

[486] Pub. L. 104-13.

[487] Pub. L. 107-198.

[488] 44 U.S.C. § 3506(c)(4).

[489] 47 CFR §§ 1.415, 1.419.

[490] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

[491] 47 CFR § 1.1200 *et seq.*

arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

206. *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.

207. *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. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

208. *Additional Information*. For additional information on this proceeding, contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716, or William.Wallace@fcc.gov, or Ike Ofobike, Consumer and Governmental Affairs Bureau, at 202-418-1028, or Ike.Ofobike@fcc.gov.

VI. ORDERING CLAUSES

209. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 3, 225 and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 225, 617, the foregoing *Second Report and Order* IS ADOPTED.

210. IT IS FURTHER ORDERED that the *Second Report and Order* SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register, except that the amendments to section 64.606(g)(6) will not become effective until OMB completes any review that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act and provides an effective date by subsequent Public Notice 30 days after publication of a summary in the Federal Register.

211. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of the *Second 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).

212. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 3, (4)(i), (4)(j), 225, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i), 154(j), 225, and 617, the foregoing *Further Notice of Proposed Rulemaking* IS ADOPTED.

213. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before 30 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register.

214. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of the *Second Report and Order and Further 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

List of Commenting Parties

Commenting Organizations:

American Council of the Blind
American Foundation for the Blind
Bridge Multimedia
ClearCaptions, LLC
Communications Equality Advocates (National Association of the Deaf, Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, Communication Service for the Deaf, TDIforAccess, accesSOS, Deaf Seniors of America, Hearing Loss Association of America, Deaf in Government, Association of Late-Deafened Adults, Global Alliance of Speech-to-Text Captioning, Cerebral Palsy and Deaf Organization, Registry of Interpreters for the Deaf)
Consortium of Constituents with Disabilities (CCD) Technology and Telecommunications (Tech) Task Force
Consumer Technology Association
Convo Communications, LLC
Electronic Privacy Information Center
Hamilton Relay, Inc.
LanguageLine Solutions
National Federation of the Blind
People's Republic of China
Safman Consulting
Sign-Speak Inc.
Sorenson Communications, LLC
Telecommunications Access of Maryland
USTelecom—The Broadband Association
Voiceitt, Inc.

Reply Comments:

California Public Utilities Commission
Communications Equality Advocates
Consumer Technology Association
Sorenson Communications, LLC
Sign-Speak Inc.
T-Mobile USA, Inc.
ZP Better Together, LLC

Note: The Commission appreciates the numerous comments from concerned individuals in this proceeding. These comments are available through the Commission's Electronic Comment Filing System.

APPENDIX B

Final Rules

The Federal Communications Commission amends Title 47 of the Code of Federal Regulations as follows:

Part 14 – ACCESS TO ADVANCED COMMUNICATION SERVICES AND EQUIPMENT BY PERSONS WITH DISABILITIES

1. The authority citation for part 14 continues to read as follows:

Authority: 47 U.S.C. [to be completed prior to publication in the Federal Register], unless otherwise noted.

2. Amend § 14.21 by revising paragraph (b)(2)(iv) and adding new paragraph (b)(4) to read as follows:

§ 14.21 Performance Objectives.

* * * * *

(b) * * *

(2) * * *

(iv) *Availability of auditory information*. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form. For interoperable video conferencing services, beginning [**TWO YEARS AND 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**], provide at least one mode with captions that accurately and synchronously display the spoken communications in a video conference, and enable users to connect with third-party captioning services so that captions provided by such services appear on the requesting user's video conference screen. In this paragraph (iv):

(A) *Accurately* means that captioning matches the spoken words of a conversation, in the order spoken, verbatim, without summarizing or paraphrasing, sufficiently to enable a user to understand what is being said.

(B) *Synchronously* means that, to the greatest extent possible, the captions begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end, are delivered fast enough to keep up with the speed of those words and sounds, and remain displayed long enough to be read by the user.

* * * * *

(4) *Interoperable Video Conferencing Service*. In addition to the other requirements of this section, beginning [**TWO YEARS AND 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**], interoperable video conferencing services and covered equipment and software used with such services shall:

(i) Enable the use of sign language interpretation provided by third parties, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language communication.

(ii) Provide user interface control functions that permit users to activate and adjust the display of captions, speakers, and signers and other features for which user control is necessary for accessibility. In this paragraph (ii):

(A) *Adjust the display of captions* means that a video conference participant can alter the size, font, and on-screen location of captions and adjust the color and opacity of both the captions and the caption background.

(B) *Adjust the display of speakers and signers* means that video conference participants can minimize or hide extraneous windows, expand the windows of their choice, or relocate particular windows; and edit their own display names before or after joining a video conference.

Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. [to be completed prior to publication in the Federal Register], unless otherwise noted.

4. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. [to be completed prior to publication in the Federal Register], unless otherwise noted.

5. Amend 64.601(a) by:

a. redesignating paragraphs (23) through (26) as (24) through (27), (27) and (28) as paragraphs (29) and (30), paragraphs (29) through (52) as paragraphs (32) through (55), and paragraphs (53) through (58) as paragraphs (57) through (61); and

b. adding new paragraphs (23), (28), (31), and (56) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

* * * * *

(a) * * *

(23) Integrated VRS. The provision of VRS in a video conference whereby the CA is included as a participant in the video conference and communication between the CA and the participants takes place on the video conferencing platform rather than through a separate connection.

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(28) Interoperable video conferencing service (IVCS). Has the meaning given in Part 14 of this chapter.

* * * * *

(31) Multi-party video conference. A video conference call with three or more participants, excluding VRS CAs and any other participant providing an accommodation for a participant.

* * * * *

(56) Video conference. A session of IVCS involving two-way real-time communication between two or more IVCS users.

* * * * *

6. Amend § 64.604 by:

a. revising paragraphs (a)(2)(i), (c)(5)(iii)(D)(*4*), (c)(5)(iii)(E)(*2*), (c)(14), (d)(5), and (e); and

b. adding paragraphs (c)(5)(iii)(D)(*9*), (c)(15), and (f);

to read as follows:

§ 64.604 Mandatory minimum standards.

(a) * * *

(2) * * *

(i) Except as authorized by section 705 of the Communications Act, 47 U.S.C 605, TRS providers and CAs are prohibited from disclosing the content of any relayed conversation (and any non-relayed content

communicated in a video conference) regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation (and any non-relayed content communicated in a video conference) beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*4*) * * *

(*ii*) Submit such data electronically, in a standardized format. For purposes of this subparagraph, an automated record keeping system is a system that captures data in a computerized and electronic format that does not allow human intervention during the call session for either conversation or session time; *provided that*, this subparagraph (c)(5)(iii)(D)(*4*) does not prohibit the submission of a CDR in which the end of conversation or session time is automatically determined by a CA's exit from a video conference prior to its termination, in accordance with the Commission's applicable rules.

(*9*) A VRS provider's call data shall identify each video conference in which integrated VRS is provided. For such video conferences, in lieu of the information specified in paragraphs (c)(5)(iii)(D)(*1*)(*v*) and (*vi*) of this section, a VRS provider may submit information, as specified in instructions issued by the administrator, that identifies the VRS user requesting service and the video conference session in which service was provided.

* * * * *

(E) * * *

(*2*) TRS minutes of use for purposes of cost recovery from the TRS Fund are defined as the minutes of use for completed interstate or Internet-based TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit, except that for the provision of integrated VRS in a video conference, a VRS provider's TRS minutes of use are defined in paragraph (e) of this section.

* * * * *

(14) TRS calls requiring the use of multiple CAs. TRS Fund compensation may be paid for more than one CA (or automated equivalent of a CA, when authorized) to handle the following types of calls:

(i) VCO-to-VCO calls between multiple captioned telephone relay service users, multiple IP CTS users, or captioned telephone relay service users and IP CTS users; and

(ii) Calls between users of different types of relay services for which more than one CA is warranted.

(15) Exclusivity Agreements. A TRS provider may not enter into an agreement with an IVCS provider if such agreement would give the TRS provider exclusive access among TRS providers to the IVCS provider's facilities or such agreement would give the IVCS provider exclusive access among IVCS providers to the TRS provider's service via a video connection.

(d) * * *

(5) Visual privacy screens/idle calls.

(i) Except as provided in this paragraph (d)(5), a VRS CA shall not enable a visual privacy screen or similar feature during a VRS call and must disconnect a VRS call if the caller or the called party enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9-1-1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(ii) A VRS CA providing integrated VRS in a multi-party video conference:

(A) may temporarily turn off the CA's video camera when engaged in team interpreting, if the other CA is actively providing ASL interpretation;

(B) may stay connected to the video conference if the VRS user who requested service has turned off the user's camera, as long as that user stays connected to the video conference; and,

(C) if five minutes elapse in which no party is responsive or engaged in conversation, shall announce that VRS will be terminated and the CA shall disconnect from the video conference.

* * * * *

(e) Provision of integrated VRS in video conferences

(1) A VRS provider may provide integrated VRS in a video conference upon request by a registered VRS user (or by a person authorized by a registered enterprise VRS user).

(2) A VRS provider providing integrated VRS in a video conference shall:

(i) Collect from the party requesting service sufficient information to confirm the requesting party's registration for VRS;

(ii) Require CAs, when joining a video conference, to self-identify as a CA and provide the name of the VRS provider (e.g., by editing their display name); and

(iii) Treat each video conference as a single call for compensation purposes, except as specifically authorized by the Commission.

(3) For the purpose of TRS Fund compensation for the provision of integrated VRS in a video conference, a VRS provider's TRS minutes of use begin when a CA enters the video conference, provided that the CA identifies the requesting VRS user within five minutes of entering the video conference. If, within that time, the CA cannot identify the requesting VRS user, or it is evident that VRS is not needed, then the call must be identified as non-compensable.

(4) For the purpose of TRS Fund compensation for the provision of integrated VRS in a video conference, a VRS provider's TRS minutes of use end when the earliest of the following events occurs:

(i) The CA disconnects from the video conference;

(ii) All non-signing participants disconnect from the video conference;

(iii) All signing participants disconnect from the video conference; or

(iv) The registered VRS user who initially requested service disconnects from the video conference and five minutes elapse without a further request for service by a registered VRS user participant.

(f) **Other standards.** The applicable requirements of § 9.14 of this chapter and §§ 64.611, 64.615, 64.621, 64.631, 64.632, 64.644, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 are to be considered mandatory minimum standards.

7. Amend section 64.606 by adding paragraph (g)(6) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

* * * * *

(g) * * *

(6) If a VRS provider provides integrated VRS in video conferences, its annual report shall provide a detailed explanation of the instructions and training provided to CAs on implementation of § 64.604(e), including guidance on how to make the determinations required by § 64.604(e)(3).

8. Amend section 64.615 by revising paragraph (a)(1)(i) to read as follows:

§ 64.615 TRS User Registration Database and administrator.

(a) * * *

(1) * * *

(i) Validation shall occur during the call setup process, prior to the placement of the call, except that validation of the provision of integrated VRS in a video conference shall occur prior to the connection of a VRS CA to the video conference.

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *2023 IVCS NPRM* released in June 2023.[2] The Commission sought written public comment on the proposals in the *2023 IVCS NPRM*, including comment on the IRFA.[3] No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need For, and Objectives of, the Report and Order

2. In the Se*cond Report and Order*, the Commission amends its rules to ensure that people with disabilities are able to access and use interoperable video conferencing service (IVCS), a category of advanced communication service (ACS).[5] As video conferencing has grown from a niche product to an essential vehicle of communication, the need for accessibility has become acute; yet, there remain significant gaps in the accessibility of video conferencing services. Therefore, the Commission amends its Part 14 rules, which govern accessibility of ACS, adding performance objectives that specifically enable the accessibility of IVCS. These performance objectives include: (1) providing speech-to-text (captioning); (2) enabling access to sign language interpreting provided by third parties, including video relay service (VRS); and (3) providing user interface controls for video conferences.[6] In addition, the Commission amends its Part 64 rules governing telecommunications relay services (TRS) to reflect that the Interstate TRS Fund can support the integrated provision of relay services in video conferences—whether or not the video conferencing platform can be accessed via a dial-up telephone call.[7] The Commission modifies the TRS rules to facilitate such integration and prevent waste, fraud, and abuse.[8] Finally, the Commission amends the TRS rule governing use of multiple forms of TRS on the same call to ensure that individuals with differing forms of disability can communicate using their preferred form of TRS.[9]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

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[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Accessibility of 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*, CG Docket Nos. 23-161, 10-213, and 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, 38 FCC Rcd 6300, 6355-58, App. C (IRFA) (2023) (*2023 IVCS Definition Order* or 2023 *IVCS NPRM*).

[3] *See 2023 IVCS NPRM*, 38 FCC Rcd 6341-42, paras. 123-24.

[4] *See* 5 U.S.C. § 604.

[5] *See* 47 U.S.C. § 153(1) (definition of ACS).

[6] *See Second Report and Order*, Part III.A.4.

[7] *Id.,* Part III.B.1.

[8] *Id.,* Part III.B.3.

[9] *Id.,* Part III.C.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[10] 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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[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 SBA.[14]

6. The Commission's decisions in the *Second Report and Order* will affect the obligations of providers of interoperable video conferencing services and telecommunications relay services. These services can be included within the broad economic category of All Other Telecommunications.

7. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[15] 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.[16] 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.[17] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[18] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[19] Of those firms, 1,039 had revenue of less than $25 million.[20] Based on this

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[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] *See* U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[16] *Id.*

[17] *Id.*

[18] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/2/22, NAICS Code 517810).

[19] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919,

(continued….)

data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. The amendments to the Commission's rules adopted in the *Second Report and Order* may modify certain reporting, recordkeeping or other compliance obligations of certain small entities that provide IVCS or TRS. Compliance with these amended rules will be required two years after the effective date of the *Second Report and Order*. The performance objectives adopted clarifying existing obligations, and are subject to existing achievability criterion.[21] As a result, small entities should not find compliance with these rules overly burdensome.

9. *Accessibility of IVCS*. Part 14 of the Commission's rules requires that providers of ACS—including IVCS—and manufacturers of equipment used with ACS ensure that their services and equipment (including associated software) are accessible and usable by people with disabilities, unless these requirements are not achievable.[22] The IVCS-specific performance objectives adopted by the Commission must be implemented by IVCS providers and manufacturers, including small entities, unless they are not achievable. The Commission establishes performance objectives to ensure flexibility in allowing entities to meet the statutory obligations of ensuring services and equipment are accessible to people with disabilities.

10. *IVCS Recordkeeping*. The Commission's existing rules require that each provider of ACS (including IVCS) and each manufacturer of equipment used to provide ACS maintain, in the ordinary course of business and for a reasonable period, records documenting the efforts taken by such service provider or manufacturer to implement section 716 of the Communications Act of 1934, as amended,[23] including: (1) information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.[24] Providers of IVCS and manufacturers of equipment used for IVCS are subject to these existing requirements. In adopting additional performance objectives for IVCS, the Commission increases the amount of information that entities must retain and report under the recordkeeping. The time and resources needed to fulfill this additional recordkeeping should be minimal given the ongoing obligation to retain such records.

11. *IVCS Reporting*. The Commission's existing rules require that an officer of each provider of ACS (including IVCS) and an officer of each manufacturer of ACS equipment must submit to the Commission an annual certificate that records are being kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider has been exempted from compliance

(Continued from previous page)
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.

[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.

[21] 47 U.S.C. § 617(a)(1), (b)(1); 47 CFR § 14.20; *see also* 47 CFR § 14.10(b) (defining "achievable").

[22] 47 CFR § 14.20(a)(1)-(2).

[23] 47 U.S.C. § 617.

[24] 47 CFR § 14.31(a).

with Section 716 under applicable rules.[25] The form and content of the reporting will be unchanged, but the officer may require additional time to confirm the records for the new performance objectives are kept in accordance with the recordkeeping requirements.

12. *IVCS Compliance Costs*. As discussed in the *Second Report and Order*, we received no specific cost estimates from commenters. Due to the diversity of IVCS service providers and IVCS equipment manufacturers subject to section 716, as well as the multiple general and entity-specific factors used in determining whether, for a given service provider or manufacturer, accessibility for a particular service item of IVCS equipment (or a particular) is achievable, it is difficult to estimate the costs of compliance for those small entities covered by the amended rules. However, the rules themselves include a safeguard to ensure that the burden and cost of compliance will not be unreasonable: compliance is conditioned on each objective being "achievable," i.e., "with reasonable effort or expense."[26] An achievability determination must consider the nature and cost of the steps needed to meet the requirement, the technical and economic impact on the company's operation, the type of operations of the company, and the extent to which accessible services or equipment are already being offered by the company.[27]

13. *TRS Amendments*. The amendments to the Commission's rules governing TRS are designed to facilitate the use of TRS Communications Assistants (CAs) in video conferences while minimizing the risk of waste, fraud, and abuse of the TRS Fund. These modifications only apply to a small entity TRS provider to the extent that users of the provider's TRS participate in video conference calls. Otherwise, the TRS compliance requirements would remain unchanged. Most of the TRS rule changes are a clarification of the extent of a rule's application to provision of TRS in video conferences. For example, providers of VRS, a form of TRS, must continue to meet user validation and call detail record reporting obligations when opting to provide VRS in video conferences. Call detail records must be recorded automatically. VRS providers must also include a detailed explanation of the guidance they provide to CAs regarding when compensable time starts and stops in their annual compliance reports. To collect compensation from the TRS Fund for a particular call, a VRS provider must submit call detail record to the TRS Fund administrator identifying video conferences where VRS is provided on integrated basis. These compliance and reporting requirements are consistent with existing obligations that VRS providers must meet in providing VRS and do not change the burdens of such entities.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

14. 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."[28]

15. The requirements for ACS in Part 14 were adopted in 2011.[29] When the Commission confirmed the definition of IVCS in the 2023 IVCS Definition Order, it gave all IVCS providers one year

[25] *Id.* § 14.31(b).

[26] 47 CFR § 14.10(b); 47 U.S.C. § 617(g).

[27] 47 CFR § 14.10(b)(2), (4); 47 U.S.C. § 617(g)(2), (4).

[28] 5 U.S.C. § 604(a)(6).

[29] *See Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011).

to come into compliance with the existing ACS accessibility requirements in Part 14.[30] In the *Second Report and Order*, the Commission considered a number of alternatives in adopting performance objectives for achieving accessibility applicable to IVCS.[31] The Commission provides all entities subject to the new rules two years from the effective date of the *Second Report and Order* to come into compliance. This will allow for product development and implementation within typical product upgrade and development cycles and minimize development burdens on small entities.[32] Like all performance objectives in Part 14, these modified requirements are subject to options to make a product or service accessible by incorporating accessibility features into the product or service itself, or by relying third party applications, peripheral devices, software, hardware, or CPE that are available to the consumer at nominal cost.[33] All Part 14 performance objectives are also subject to an "achievability" standard that takes into account the cost of compliance and the nature of the impact of compliance on a specific entity.[34] In addition, the rules provide an exemption for customized services and equipment and authorize the grant of waivers for multipurpose services and equipment.[35] These flexibility and achievability conditions apply equally to all covered entities, including small entities and are necessary to ensure video conferencing is accessible to people with disabilities.

16. The amendments to the TRS rules are designed to facilitate access to TRS on video conferencing platforms. In the *Second Report and Order*, the Commission determines that TRS provided on video conferences are compensable from the TRS Fund and detail the applicability of the existing TRS rules to such rules to minimize the potential for waste, fraud, and abuse from the expansion of services. In allowing a voluntary approach to integrating TRS, the Commission allows providers to opt into the provision of such services and flexibility in the method of developing such integrated services. In clarifying the extent to which existing rules are applicable and amending such rules to account for TRS provided in video conferences the Commission ensures providers are able to receive TRS Fund compensation for their provision of TRS in video conferences, while continuing to protect the TRS Fund from potential waste, fraud, and abuse if existing protections were thought inapplicable. The Commission also determined to further develop the record and give providers the opportunity to experience providing integrated services before addressing additional proposals from the *2023 IVCS NPRM*, minimizing the potential burden of implementing requirements before fully understanding the benefits and burdens of those proposals.

G. Report to Congress

17. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to Congress, pursuant to the Congressional Review Act.[36] In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof), will also be published in the *Federal Register*.

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[30] *2023 IVCS Definition Order*, 38 FCC Rcd at 6317-18, para. 41.

[31] *Second Report and Order*, Part III.A.4.

[32] *Id.*, paras. 79-82.

[33] 47 CFR § 14.10(a)(3).

[34] *Id*. § 14.20(a)(1)-(2); *id*. § 14.10(b) (definition of "achievable").

[35] *See id*. § 14.3 (exemption for customized equipment or services); *id*. § 14.5 (waivers for multipurpose services and equipment).

[36] *See* 5 U.S.C. § 801(a)(1)(A).

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 *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines on the *Further Notice* provided in the item. The Commission will send a copy of the entire *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and the IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

A. Need for, and Objective of, Proposed Rules

2. In the *Further Notice*, the Commission proposes to adopt additional requirements in Part 14 of its rules to improve the accessibility of Interoperable Video Conferencing Services (IVCS), a form of advanced communication service (ACS).[4] First, the Commission seeks comment on whether to add a Part 14 performance objective for video conferencing services to provide text-to-speech and speech-to-speech capability for individuals with speech disabilities,[5] and whether to require IVCS platforms to provide sign language interpretation, and the costs and benefits of such actions.[6] The Commission also seeks comment on additional Part 14 performance objectives for user controls, video window characteristics, and audio description and visual image description services.[7] Further, the Commission seeks comment on Part 14 requirements on IVCS platforms for persons with cognitive and motor disabilities.[8] Finally, the Commission seeks comment on whether additional performance objectives are necessary to ensure that equipment and covered software are accessible to people with disabilities.[9]

3. The Commission seeks comment on additional requirements in Part 64 of its rules to facilitate the integration of telecommunications relay services (TRS) with video conferencing services. The Commission seeks comment on whether there are objective, bright line guidelines that it could use to determine when it would be warranted to compensate a Video Relay Service (VRS) provider for sending a team of two or more sign language interpreters to a video conference call.[10] The Commission also seeks comment on whether it should adopt additional amendments to its rules to facilitate the integrated provision of Internet Protocol Captioned Telephone Service (IP CTS) for participants within a video conferencing platform and how to prevent waste, fraud, or abuse of the Interstate TRS Fund.[11] Finally,

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[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* 47 U.S.C. § 153(1) (definition of ACS).

[5] *Further Notice,* paras. 151-52.

[6] *Id.,* paras. 153-54.

[7] *Id.,* paras. 155-59, 163-67.

[8] *Id.*, paras. 171-75.

[9] *Id.*, paras. 176-77.

[10] *Id.*, paras. 179-83.

[11] *Id.,* paras. 184-87.

the Commission seeks comment on whether and how it could adopt rules to facilitate use of analog forms of TRS and Internet Protocol Relay Service (IP Relay) on video conferencing calls.[12]

4. In proposing these amendments to its Part 14 and Part 64 rules, the Commission addresses comments in the record that recommend specific accessibility requirements for video conferencing platforms to enable individuals with hearing, speech, vision, cognitive, and mobility disabilities to participate in video conference in a manner equivalent to the experience of individuals without such disabilities.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 2, 3, (4)(i), (4)(j), 225, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i), 154(j), 225, 617.

C. Description and Estimate of the Number of Small Entities Impacted

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 and policies, if adopted.[13] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[14] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[15] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[16]

7. If the proposed rules are adopted, the rules will affect the obligations of providers of IVCS and providers of TRS. IVCS can be included within the broad economic category of All Other Telecommunications.

8. *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.[17] 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.[18] 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.[19] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[20] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that

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[12] *Id.*, paras. 188-89.

[13] 5 U.S.C. § 603(b)(c).

[14] *Id.* § 601(6).

[15] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[16] 15 U.S.C. § 632.

[17] *See* U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[18] *Id.*

[19] *Id.*

[20] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

operated for the entire year.[21] Of those firms, 1,039 had revenue of less than $25 million.[22] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

9. *Telecommunications Relay Service (TRS) Providers*. Telecommunications relay services enable individuals who are deaf, hard of hearing, deafblind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.[23] Internet-based TRS connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.[24] Video Relay Service (VRS) one form of Internet-based TRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.[25] Internet Protocol Captioned Telephone Service (IP CTS) another form of Internet-based TRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[26] A third form of Internet-based TRS, Internet Protocol Relay Service (IP Relay), permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network.[27] Providers must be certified by the Commission to provide VRS and IP CTS[28] and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.[29] Analog forms of TRS, text telephone (TTY),[30] Speech-to-Speech Relay Service,[31] and Captioned Telephone Service,[32] are provided through state TRS programs, which also must be certified by the Commission.[33]

10. 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

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[21] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[22] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[23] 47 U.S.C. § 225(a)(3).

[24] 47 CFR § 64.601(a)(22). IP CTS can also be provided with an Automatic Speech Recognition programs producing the captions. Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

[25] *Id.* § 64.601(a)(51).

[26] *Id.* § 64.601(a)(23).

[27] *Id*. § 64.601(24).

[28] *Id.* § 64.606(a)(2).

[29] *Id.* § 64.604(c)(5)(iii)(F).

[30] *Id.* § 64.601(a)(44) ("A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.").

[31] *Id.* § 64.601(a)(41) ("A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.").

[32] A telephone captioning service provided over the public switched telephone network.

[33] *Id.* § 64.606(a)(1).

business size standard.[34] Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.[35] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[36] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[37] Of those firms, 1,039 had revenue of less than $25 million.[38] Based on Commission data there are 14 certified Internet-based TRS providers and two analog forms of TRS providers.[39] The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. The proposed changes for which comment is sought in the *Further Notice,* if adopted, would impose new or modified reporting, recordkeeping or other compliance obligations on certain small entities that provide TRS, IVCS, or manufacturer equipment and software for use with IVCS. Although, the Commission cannot, at present, determine whether small entities will have to hire professionals to implement and comply with the proposed requirements in the *Further Notice*, nor can it quantify the cost of compliance for small entities, we anticipate the information we receive in comments, including cost and benefit analyses where requested, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Further Notice*. We expect that the approaches the Commission proposes will have minimal cost implications for covered entities because many of these requirements are part of existing reporting processes for these entities. Further, the rules themselves include a safeguard to ensure that the burden and cost of compliance will not be unreasonable: compliance is conditioned on each objective being "achievable," i.e., "with reasonable effort or expense."[40] An achievability determination must consider the nature and cost of the steps needed to meet the requirement, the technical and economic impact on the company's operation, the type of operations of the company, and the extent to which accessible services or equipment are already being offered by the company.[41]

12. *Accessibility of IVCS Equipment*. Part 14 of the Commission's rules requires that providers of ACS—including IVCS—and manufacturers of equipment used with ACS ensure that their services and equipment (including associated software) are accessible and usable by people with

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[34] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[35] *Id*.

[36] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[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 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.

[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 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] *See* Internet-Based TRS Providers | Federal Communications Commission (fcc.gov), https://www.fcc.gov/general/internet-based-trs-providers (last visited May 13, 2024); TRS by State and Territories, Federal Communications Commission (fcc.gov), https://www.fcc.gov/general/trs-state-and-territories (last visited May 13, 2024).

[40] 47 CFR § 14.10(b); 47 U.S.C. § 617(g).

[41] 47 CFR § 14.10(b)(2), (4); 47 U.S.C. § 617(g)(2), (4).

disabilities, unless these requirements are not achievable.[42] The Commission seeks comment on performance standards for ensuring equipment used with IVCS are accessible and usable by people with disabilities. Such performance objectives if adopted could modify reporting, recordkeeping, and compliance obligations of such entities.

13. *IVCS Recordkeeping.* The Commission's existing rules require that each provider of ACS (including IVCS) and each manufacturer of equipment used to provide IVCS maintain, in the ordinary course of business and for a reasonable period, records documenting the efforts taken by such manufacturer or service provider to implement sections 716 of the Communications Act of 1934, as amended:[43] (1) information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.[44] If the Commission adopts additional performance objectives under part 14, it may increase the amount of information that entities must retain and report under the recordkeeping requirement. The time and resources needed to fulfill this additional recordkeeping should be minimal given the ongoing obligation to retain such records.

14. *IVCS Reporting.* The Commission's existing rules require that an officer of each provider of ACS (including IVCS) and an officer of each manufacturer of equipment (including software) used to provide ACS submit to the Commission an annual certificate that records are being kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider has been exempted from compliance with section 716 under applicable rules.[45] The Commission anticipates that the form and content of the reporting will be unchanged, but the office may require additional time to confirm the records for any new performance objectives are kept in accordance with the reporting requirements.

15. *TRS Amendments.* The proposed amendments to the Commission's rules governing TRS are designed to facilitate the use of TRS Communications Assistants (CAs) in video conferences, while minimizing the risk of waste, fraud, and abuse of the TRS Fund. These modifications would only apply to an entity that provides TRS to the extent that users of that entity opts to participate in video conference calls. Otherwise, the TRS compliance and reporting requirements remain consistent with existing reporting obligations and our proposals would only clarify those obligations without changing the burden to small entities.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

16. 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.[46]

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[42] 47 CFR § 14.20(a)(1)-(2).

[43] 47 U.S.C. § 617.

[44] 47 CFR § 14.31(a).

[45] *Id.* § 14.31(b).

[46] 5 U.S.C. § 603(c)(1)-(4).

17. The *Further Notice* seeks comments on a number of alternatives that may impact small entities. The proposed Part 14 performance objectives would be subject to options to make a product or service accessible by incorporating accessibility features into the product or service itself or by relying on third party applications, peripheral devices, software, hardware, or CPE that are available to the consumer at nominal cost.[47] All Part 14 performance objectives are also subject to an "achievability" standard that takes into account the cost of compliance and the nature of the impact of compliance on a specific entity.[48] In addition, the rules provide an exemption for customized services and equipment and authorize the grant of waivers for multipurpose services and equipment.[49] These flexibility and achievability conditions apply equally to all covered entities, including small entities.

18. The proposed requirements would apply equally to all IVCS providers and are necessary to ensure video conferencing is accessible to and usable by people with disabilities. The amendments to the TRS rules will only apply to the extent a small entity TRS provider allows its users to participate in integrated IVCS calls. The Commission seeks comment on multiple alternatives to ensure it is able to implement rules to facilitate the availability of and compensation for multiple communications assistants during a video conference call, while minimizing the potential risk of waste, fraud, and abuse to the TRS Fund in allowing such practices. Further developing this record will allow the Commission to minimize potential burdens to small entities, while protecting the integrity of the TRS Fund.

19. The *Further Notice* seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *Further Notice*. The Commission expects to consider the economic impact on, and alternatives for, small entities as identified in comments filed in response to the *Further Notice*, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules Which Duplicate, Overlap, or Conflict with, the Commission's Proposals.

20. None.

[47] 47 CFR § 14.10(a)(3).

[48] *Id.* § 14.20(a)(1)-(2); *id.* § 14.10(b) (definition of "achievable").

[49] *See* 47 CFR §§ 14.3 (exemption for customized equipment or services); 14.5 (waivers for multipurpose services and equipment).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *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, Second Report and Order, and Further Notice of Proposed Rulemaking (September 26, 2024)

There was only one time I was in the White House with Stevie Wonder. It was over a decade ago, when the President signed the Twenty-First Century Communications and Video Accessibility Act into law. The iconic and fearless musician was there to celebrate this legislation that updated the Americans with Disabilities Act for the digital age.

Celebrations are important. We should take a moment to cheer the signing of a new civil rights law. But it is just as important that we give it meaning over time—and that is what we do here today.

In this decision we take note of changes in the way we communicate accelerated by the pandemic. When physical doors closed, the virtual spaces provided by conferencing platforms like Zoom, Teams, and WebEx became an essential way to connect for work, school, health, and simple contact with family and friends. And while we have moved back to in-person meetings, the role video conferencing platforms play in modern life has expanded.

Yet for those with disabilities this shift has not been easy. That's because inconsistent accessibility features on these platforms have not always made it possible to use them. This needs to change, because no matter who you are, you deserve the opportunity to communicate in the digital age.

Last year we began our efforts to remedy this problem. We issued an order clarifying that under the Twenty-First Century Communications and Video Accessibility Act, "interoperable video conferencing services" must comply with our accessibility rules.

Today we follow up with details. We update our rules to establish specific performance objectives so that video conferencing platforms offer captioning and also support third-party captioning and sign language interpretation services. We make clear users should have the ability to adjust features so that interpreters can always be visible on screen, regardless of who is speaking and who has joined a conference. On top of that, we amend our rules so that the Telecommunications Relay Service Fund supports the integration of relay services with video conferencing platforms. Then we seek comment on ways we can adopt other performance objectives for video conferencing services, in order to ensure that these platforms remain accessible over time.

Our efforts are consistent with the law and aligned with the fundamental idea behind it—that when technology changes our accessibility policies need to evolve and keep pace.

In his 1976 hit Sir Duke, Stevie Wonder sings "Music is a world within itself, with a language we all understand. With equal opportunity for all to sing, dance, and clap hands." I've always loved those words. I think they resonate with what we do here today—foster equal opportunity to communicate in a language that we understand, making it possible for everyone to create, participate, and take a stand.

Thank you to the staff responsible for today's effort, including Bob Aldrich, Michael Scott, Suzy Rosen Singleton, Will Schell, Bill Wallace, Ike Ofobike, Josh Mendelsohn, Stephen Wang, Molly Burgdorf, Dana Warrick, and Timothy Wynn from the Consumer and Governmental Affairs Bureau; Chin Yoo, David Konczal, Karen Schroeder, Richard Mallen, Terry Cavanaugh, Erika Olsen, and Joel Rabinovitz from the Office of General Counsel; Rachel Kazan, Andrew Wise, Mark Montano, Michelle Schaefer, Emily Talaga, Patrick Brogan, and Kim Makuch from the Office of Economics and Analytics; Soumitra Das and Andrew Mulitz from the Office of the Managing Director; Sharon Lee from the Enforcement Bureau; and Joycelyn James from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *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, Second Report and Order, and Further Notice of Proposed Rulemaking (September 26, 2024)

In 2023, the Commission took a critical – if overdue – step. We made clear that interoperable video conferencing services (IVCS) – think Teams, Zoom, Google Meet, etc. – are subject to the FCC's accessibility requirements. At the time, I said that IVCS had become one of the primary ways that we communicate. That statement still rings true today.

So I am proud that today's item continues the push for Americans that need access to these critical services. Last year, we said that IVCS must comply with the Commission's existing accessibility performance objectives. Today, we amend and strengthen those objectives. Following the recommendations of our Disability Advisory Committee (DAC), we will now require IVCS providers to interconnect with third party captioning and sign language interpretation services (e.g., telecommunications relay services (TRS)). We will also require them to give users greater control over the display of captions, speakers, signers, and other accessibility features. This means that a deaf user will be able to pin their interpreter, for example, and a low vision user will have greater control over screen reader functionality.

We also recognize that our work to ensure full and equal access to IVCS is not done. In the Further Notice, we seek comment on additional updates. Are more specific performance objectives needed to ensure accessibility for people with speech disabilities, or people with cognitive and mobility disabilities? Are additional amendments needed to ensure the accessibility of equipment and software used to provide and access IVCS? I look forward to the record that will develop on these and other issues.

Finally, I would be remiss if I didn't note that the ubiquity of IVCS is yet another reason why it is critical to ensure that all Americans have access to high-speed broadband. In a world where everything from parent-teacher conferences, to telehealth visits, to calls to grandma and grandpa happen over IVCS, neither disability, nor location, nor income should stand in the way of Americans being connected.

Thank you to the stakeholders who are hard at work improving and ensuring the accessibility of IVCS, to the DAC, and of course to the Commission staff who worked on this item.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *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, Second Report and Order and Further Notice of Proposed Rulemaking (September 26, 2024)

The COVID-19 pandemic reshaped our daily lives. During the difficult time when we had to stay apart from each other to protect our health and that of others, we relied on technology to work, study, visit our doctors, and to maintain all too important connections. Interconnected video conferencing services became our saving grace – a window to family, friends, and colleagues. A necessity to maintain a sense of community despite our physical distance.

I remember how important it was to see my family using a video conferencing service. We even celebrated my partner's birthday on a video call with family and friends. But what became an essential tool could not be used to its fullest promise by people with disabilities. For many people with disabilities, these necessary tools fall short. No longer.

Today, we require interoperable video conferencing services to make accessibility a priority. By updating our Part 14 rules, we promote improvements like accurate and synchronous captioning, allowing users to connect with third-party captioning and sign language interpretation services, and interface controls that allow users to adjust the display of captions, speakers, and signers. This is a big deal.

When we encourage accessibility by design, we all win. I look forward to seeing collaborations between IVCS providers, TRS providers, and providers of third-party services to innovate on accessibility tools in interoperable video conferencing services, and ultimately to increase access to critical modern tools for people with disabilities.

Thank you to the Consumer and Governmental Affairs Bureau for your hard work on this pivotal item.

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

In the Matter of	)	
	)	
Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band	))))	IB Docket No. 22-273

REPORT AND ORDER

Adopted: September 26, 2024 **Released: September 27, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. By this action, we permit use of the 17.3-17.7 GHz band by non-geostationary satellite orbit (NGSO) space stations in the fixed-satellite service (FSS) in the space-to-Earth (downlink) direction on a co-primary basis with incumbent services and on a shared, co-primary basis with geostationary satellite orbit (GSO) space stations. We also permit NGSO FSS downlink use of the 17.7-17.8 GHz band on a co-primary basis with GSO FSS operations and on an unprotected basis with respect to terrestrial fixed services. We further permit authorization of NGSO FSS receiving earth stations and authorize earth stations in motion (ESIMs) to receive FSS emissions from NGSO systems on an unprotected basis. With the appropriate technical safeguards established herein, we find that NGSO FSS can share the 17 GHz band in an efficient and effective manner with GSO FSS, broadcasting-satellite service (BSS), and incumbent terrestrial fixed service without causing harmful interference. Our action today provides a contiguous 1300 MHz of spectrum for NGSO FSS downlink operations, allowing for technologically innovative and enhanced satellite services to the benefit of American consumers. The allocations adopted

herein will also align the U.S. Table with the International Table of Allocations to provide a more cohesive global framework for FSS operators and maximize the efficient use of the 17 GHz band spectrum.

II. BACKGROUND

2. The Table of Frequency Allocations is comprised of the International Table of the International Telecommunication Union (ITU) Radio Regulations (International Table) and the Table of Frequency Allocations of the United States (U.S. Table).[1] In Region 2 of the International Table,[2] the 17.3-17.7 GHz band is allocated to FSS operations (in both uplink (Earth-to-space) and downlink directions) and to the BSS on a co-primary basis,[3] as well as to the radiolocation service on a secondary basis.[4] The adjacent 17.7-17.8 GHz band is allocated internationally in ITU Region 2 to the terrestrial fixed service, BSS, and FSS (in both uplink and downlink directions) on a primary basis and to the mobile service on a secondary basis.[5] In the U.S. Table, the 17.3-17.7 GHz band is allocated to the FSS and BSS on a co-primary basis and to the radiolocation services on a secondary basis.[6] Use of the 17.3-17.8 GHz band by BSS and FSS downlink is currently limited to GSO FSS systems in the U.S. Table.[7] The 17.7-17.8 GHz band is allocated to terrestrial fixed service and FSS (uplink and downlink) on a co-primary basis in the U.S. Table.[8]

3. The 17.3-17.8 GHz band was historically used for FSS feeder[9] uplinks that transmit programming to Direct Broadcast Satellite (DBS)[10] service GSO space stations, in addition to terrestrial

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[1] The International Table is described in 47 CFR § 2.104 and the U.S. Table is described in 47 CFR § 2.105.

[2] ITU Region 2 includes North, Central and South America and the Caribbean, along with associated offshore waters and islands, including the Hawaiian Islands and Greenland. *See* 47 CFR § 2.104, fig. 1. The ITU Region 2 area includes the United States. *See* 47 CFR §§ 2.104(b), 2.105(a).

[3] A service designated as co-primary must share operations with other services designated as co-primary in the frequency band on a co-equal basis. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.3 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, Notice of Proposed Rulemaking, 13 FCC Rcd 19923, 19925,n. 4 (1998).

[4] Footnote 5.516 of the International Table further limits use of the band by the FSS to feeder links for the BSS and in ITU Region 2 to GSO networks. Footnote 5.515 specifies that sharing between the FSS and BSS is governed by Appendix 30A, Annex 4, paragraph 1 of the ITU Radio Regulations. 47 CFR §§ 2.106(b)(516), (b)(515).

[5] Footnote 5.517 specifies that use of the FSS in the 17.7-17.8 GHz band shall not cause harmful interference to nor claim protection from assignments in the BSS operating in conformity with the Radio Regulations. 47 CFR § 2.106(a)(517).

[6] Footnote NG58 limits use of the 17.3-17.8 GHz band by the FSS uplink to feeder links for BSS. 47 CFR § 2.106(d)(58)(ii). In two geographic areas and frequency segments of the 17.3-17.7 GHz band, BSS earth stations may not claim protection from earth stations transmitting to Federal satellites in the uplink direction. 47 CFR § 2.106(c)(402).

[7] 47 CFR § 2.106(d)(58)(i).

[8] Footnote NG58 limits FSS uplink and downlink use of the band to feeder links for the BSS. Footnote US334 permits operation of Federal FSS space stations in the band subject to certain restrictions. 47 CFR § 2.1069(c)(334)(i).

[9] A feeder link is defined as a "radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than the Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas." 47 CFR § 25.103.

[10] DBS is defined as a "radiocommunication service in which signals are transmitted or retransmitted by Broadcasting-Satellite Service space stations in the 12.2-12.7 GHz band and are intended for direct reception by subscribers or the general public." 47 CFR § 25.103. DBS operations are subject to the International Radio Regulation BSS and Feeder-link Plans contained in Appendices 30 and 30A.

fixed service use of the 17.7-17.8 GHz band.[11] DBS feeder link operations typically involve the use of large, high-gain antennas at a limited number of individually-licensed earth station locations. The DBS service satellites then downlink that video programming directly to consumers in the 12.2-12.7 GHz band.[12] BSS, used as the "17/24 GHz BSS,"[13] provides service downlinks to consumers in the 17.3-17.8 GHz band and is also used for feeder uplinks to DBS space stations, i.e., reverse band operations.[14] The Commission has previously adopted rules to avoid interference between DBS and 17/24 GHz BSS operations, both in-orbit ("space path" interference[15]) and on the ground ("ground path" interference[16]).[17]

4. On August 3, 2022, the Commission adopted a Report and Order (*17 GHz GSO Order*) to permit use of the 17.3-17.8 GHz band by GSO FSS downlink space stations.[18] In the *17 GHz GSO*

[11] *See* 47 CFR § 2.106(c)(271).

[12] 47 CFR § 25.103; *see also Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, 34 FCC Rcd 9014, 9016, para. 6 (2016) (*DBS Licensing Order*).

[13] 17/24 GHz BSS is defined as a "radiocommunication service involving transmission from one or more feeder-link earth stations to other earth stations via geostationary satellites, in the 17.3-17.7 GHz (space-to-Earth) (domestic allocation), 17.3-17.8 GHz (space-to-Earth) (international allocation) and 24.75-25.25 GHz (Earth-to-space) bands." 47 CFR § 25.103.

[14] 47 CFR § 2.106(a).

[15] Space path interference may occur when the off-axis downlinked signals from one space station are detected by the receiving antenna of a nearby co-frequency space station. The severity of space path interference will depend upon the transmitted signal power level; the off-axis gain discrimination characteristics of the transmitting and receiving antennas; and on the specific orientation of, and separation between, the transmitting and receiving antennas on both stations. The latter factor in turn depends on various inter-dependent parameters including longitudinal separation and the inclination and eccentricity of both space station orbits. Management of space path interference is typically more challenging when a receiving DBS space station is located within a few tenths of a degree in orbital longitude from a transmitting co-frequency space station.

[16] Ground path interference arises in reverse-band sharing scenarios when the off-axis uplinked signals transmitted by one earth station are detected by the receiving antenna of a nearby co-frequency earth station. It is analogous to space path interference arising between co-frequency space stations as discussed above. As with space path interference, the severity of ground path interference will depend upon the transmitted signal power level, the off-axis gain discrimination characteristics of the transmitting and receiving antennas, and the specific orientation of, and separation between, the transmitting and receiving antennas on both earth stations. In addition, local geography can also influence ground path interference levels.

[17] *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, IB Docket No. 06-123, Second Report and Order, 26 FCC Rcd 8927 (2011); *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, IB Docket No. 06-123, Third Report and Order, 32 FCC Rcd 3705 (2017). Since rules were adopted for the 17/24 GHz BSS, a number of licenses or grants of U.S. market access have been issued, but only a few of these licenses or grants remain in effect. *See* ICFS File Nos. SAT-MOD-20150428-00031 and SAT-AMD-20150818-00058.

[18] *See Amendment of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations and Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band*, IB Docket Nos. 20-330, 22-273, Report and Order and Notice of Proposed Rulemaking, FCC 22-63, 2022 WL 3138555 (Aug. 3, 2022) (*17 GHz GSO Order* and *17 GHz NGSO Notice)*; *see also Amendments of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space*

(continued….)

Order, the Commission permitted FSS downlinks from GSOs to operate in the 17.3-17.7 GHz band on a co-primary basis with other primary services in that band.[19] In addition, the Commission made certain other changes to the U.S. Table to permit GSO FSS downlink operations in the adjacent 17.7-17.8 GHz band and revised the existing primary FSS allocation in the U.S. Table to permit GSO FSS space-to-Earth operations.[20] The *17 GHz GSO Order* authorized individually-licensed FSS receiving earth stations to receive FSS emissions from GSOs in the 17.3-17.8 GHz band, subject to coordination methodologies,[21] and to receive FSS emissions from GSOs in the 17.7-17.8 GHz band on an unprotected basis with respect to fixed service operations.[22] The Commission further authorized blanket-licensed receiving FSS earth stations and ESIMs[23] in the 17.3-17.8 GHz band on an unprotected basis.[24] The *17 GHz GSO Order* adopted a number of technical rules to both allow for FSS flexibility in the band and prevent harmful interference between GSO FSS downlinks and incumbent operators.[25]

5. The Commission adopted a Notice of Proposed Rulemaking (*17 GHz NGSO Notice*) along with the *17 GHz GSO Order*.[26] The *17 GHz NGSO Notice* sought comment on proposals raised in response to the *17 GHz FSS Notice* to permit NGSO FSS downlink operations in both the 17.3-17.7 GHz and 17.7-17.8 GHz bands, similar to the actions taken with regard to GSO FSS operations in the *17 GHz GSO Order*.[27]

6. The *17 GHz NGSO Notice* asked for input on specific NGSO FSS spectrum needs to permit NGSO FSS downlink operations in the band and asked commenters to provide supporting technical data and studies to determine whether such an allocation would benefit the public interest while continuing to protect incumbent users.[28] The Commission asked what technical rules would be necessary considering DBS/BSS, GSO FSS, or terrestrial fixed services operations and what rules would need to be

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Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations, IB Docket Nos. 20-330, 22-273, Order, DA 24-271 (SB-OMD 2024) (correcting non-substantive typographical errors and confirming with conventions of the National Archives and Records Administration's Office of the Federal Register).

[19] *17 GHz GSO Order* at para. 13.

[20] *Id*. at paras. 18-19.

[21] *Id*. at paras. 55-56 (extending the ITU Radio Regulations Appendix 7 coordination methodology to FSS earth stations with amended parameters).

[22] *See 17 GHz GSO Order at* paras. *18, 65-66*; *see also Amendments of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations*, Notice of Proposed Rulemaking, 35 FCC Rcd 13239 (2020) (*17 GHz FSS Notice*).

[23] Earth Station in Motion (ESIM) is a term that collectively designates Earth Station on Vessel (ESV) (an earth station onboard a craft designed for traveling on water, receiving from and transmitting to FSS space stations), Vehicle-Mounted Earth Station (VMES) (an earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to FSS space stations and operates within the U.S.), and Earth Station Aboard Aircraft (ESAA) (an earth station operating aboard an aircraft that receives from and transmits to FSS space stations) earth stations, as defined in 47 CFR § 25.103.

[24] 47 CFR §§ 25.106(d)(527)(iv), 202(a)(10)(ii); *see 17 GHz GSO Order* at paras. 65-66 (authorizing ESIMs on an unprotected basis in the 17.3-17.8 GHz band and on an unprotected basis with respect to DBS feeder link operations and terrestrial fixed service operations in the 17.7-17.8 GHz band).

[25] *See 17 GHz GSO Order* at Section III.B.

[26] *See 17 GHz NGSO Notice*.

[27] *Id.* at para. 76 and n. 222; *see 17 GHz GSO Order* at para. 74 (stating that commenters raised the imbalance of spectrum between NGSO FSS uplink and NGSO FSS downlink in the Ka-band in advocating for an NGSO FSS allocation in the 17 GHz band, and noted that allocating the 17 GHz band for NGSO FSS would align with the preparatory studies for WRC-23).

[28] *17 GHz NGSO Notice* at para. 78.

adopted or modified to enable effective sharing while protecting these incumbent users in the band.[29] In particular, the Commission asked whether the equivalent power flux-density (EPFD)[30] limits in the adjacent bands are sufficient to protect DBS/BSS and GSO FSS stations and if there are methods of protection other than EPFD limits that would be applicable.[31] Further, the Commission asked whether the addition of an NGSO allocation would further degrade the reference situation for the DBS stations operating in accordance with the ITU Radio Regulations Appendix 30 plan, and sought input on any domestic or international coordination issues or other technical challenges that should be addressed in coordination.[32]

7. The *17 GHz NGSO Notice* discussed that, after the release of the prior *17 GHz GSO FSS Notice*, sharing and compatibility studies were underway to analyze use of the 17 GHz band in preparation for World Radiocommunication Conference 2023 (WRC-23),[33] specifically addressing certain sharing issues and the potential for use of the 17.3-17.7 GHz band by NGSO FSS downlink satellites, along with ESIM operations in the 17.7-18.6 GHz and other bands.[34] Among the decisions adopted for consideration at WRC-23 was Agenda Item 1.19, which contemplated an FSS downlink allocation in the 17 GHz band for both GSO and NGSO in Region 2.[35] The ITU Radio Regulations had previously included an FSS allocation in the 17.7-17.8 GHz band in Region 2, but Agenda Item 1.19 for WRC-23 outlined a new primary allocation to the FSS downlink in the 17.3-17.7 GHz band.

8. WRC-23 modified the ITU Radio Regulations and added an FSS allocation in 17.3-17.7 GHz FSS downlink for both GSO and NGSO operations in Region 2.[36] WRC-23 extended the Article 22

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[29] *Id*.

[30] Equivalent power flux-density is defined as the sum of the power flux-densities produced at a geostationary-satellite system receive station on the Earth's surface or in the geostationary orbit, as appropriate, by all the transmit systems within a non-geostationary satellite system, taking into account the off-axis discrimination of a reference receiving antenna assumed to be pointing in its nominal direction.

[31] *See 17 GHz NGSO Notice* at para. 78.

[32] *Id*.

[33] The ITU holds multi-national World Radiocommunication Conferences to establish international provisions governing the use of the electromagnetic spectrum. WRC-23 was held from November 20, 2023 to December 15, 2023. International Telecommunication Union (ITU) World Radiocommunication Conference (WRC-23), https://www.itu.int/wrc-23/.

[34] *17 GHz NGSO Notice* at 75; *see* ITU-R Preparatory Studies for WRC-23, Int'l Telecommunications Union, Resolutions 173 (WRC-19) and 174 (WRC-19) (WRC-Agenda Items 1.16 and 1.19), https://www.itu.int/en/ITU-R/study-groups/rcpm/Pages/wrc-23-studies.aspx.

[35] *See* ITU, WRC-23, Agenda and Relevant Resolutions, at 2-4 (Council Resolution 1399) (2022).

[36] *See* ITU Radio Regulations, Edition of 2024, Article 5, https://www.itu.int/hub/publication/r-reg-rr-2024/ (effective Jan. 1, 2025) (ITU Radio Regulations) ("The use of the frequency bands 10.95-11.2 GHz (space-to-Earth), 11.45-11.7 GHz (space-to-Earth), 11.7-12.2 GHz (space-to-Earth) in Region 2, 12.2-12.75 GHz (space-to-Earth) in Region 3, 12.5-12.75 GHz (space-to-Earth) in Region 1, 13.75-14.5 GHz (Earth-to-space), 17.3-17.7 GHz (space-to-Earth) in Region 2, 17.8-18.6 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 27.5-28.6 GHz (Earth-to-space), 29.5-30 GHz (Earth-to-space) by a non-geostationary-satellite system in the fixed-satellite service is subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the fixed-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated. In Region 2, No. 22.2 shall continue to apply in the frequency band 17.3-17.7 GHz."

technical limitations of the ITU Radio Regulations to the 17.3-17.7 GHz band, which requires that NGSO FSS systems operating in accordance with ITU Radio Regulations shall neither cause unacceptable interference to nor claim protection from GSO systems in the FSS and BSS.[37] WRC-23 also adopted modifications to Resolution 85 (REV.WRC-23), revising the application of Article 22 and compliance procedures for its corresponding EPFD limits.[38] In order to receive a "qualified favorable" finding of compliance from the ITU, which is required for NGSO FSS operation under the Commission's rules,[39] NGSO FSS systems must submit a commitment of compliance along with calculations and technical descriptions of the system's Article 22 EPFD compliance using EPFD validation software.[40] The revisions to the International Table of Allocations and Articles 21 and Article 22 of the Radio Regulations will become effective January 1, 2025.[41]

9. Comments in response to the *17 GHz NGSO Notice* were due on December 27, 2022, and reply comments were due on January 24, 2023. We received seven comments[42] and six reply comments.[43] GSO FSS providers, NGSO FSS providers, and terrestrial fixed service organizations filed comments and reply comments.[44] We also received thirteen *ex parte* filings from commenters,[45] several

[37] *See* ITU Radio Regulations, Article 22 at 22.5C.13.

[38] *See* ITU Radio Regulations, Resolution 85 (REV.WRC-23), Application of Article 22 of the Radio Regulations for the protection of geostationary fixed-satellite service and broadcasting-satellite service networks from non-geostationary fixed-satellite service systems (effective as of December 16, 2023, *see* WRC-23 Final Acts, Resolution 99 (REV.WRC-23), *considering* c)) (amending procedures for NGSO FSS operators to submit EPFD input data and receive qualified favorable findings of compliance with the Article II EPFD limits).

[39] *See* 47 CFR § 25.146(c) (requiring that, prior to the initiation of service, an NGSO FSS operator licensed or holding a market access authorization to operate in the 10.7-30 GHz frequency range must receive a "favorable" or "qualified favorable" finding by the ITU Radiocommunication Bureau, in accordance with Resolution 85 of the ITU Radio Regulations, as incorporated by reference as stated in 47 CFR § 25.108,regarding its compliance with applicable ITU EPFD limits). Section 25.146(c)(1) and (2) of the Commission's rules require that NGSO FSS operators must communicate such finding to the Commission and submit the input data files used for the ITU validation software.

[40] *See* ITU Radio Regulations, Resolution 85 (REV.WRC-23) (requiring a commitment of compliance with the EPFD limits in the corresponding tables to Article 22 of the Radio Regulations until the an EPFD validation software tool becomes available, at which point compliance with the EPFD limits and qualified favorable findings will be determined by the validation software).

[41] *See* ITU Radio Regulations, Article 59 (WRC-12); *see also* ITU Radio Regulations, Resolution 99 (REV.WRC-23) – Provisional application of certain provisions of the Radio Regulations as revised by the 2023 World Radio Conference and abrogation of certain Resolutions and Recommendations, *considering* a) and c) (clarifying that the partial revision to the Radio Regulations will enter into force on January 1, 2025, but, as a general rule, new and revised Resolutions and Recommendations enter into force at the time of singing of the Final Acts of a conference).

[42] Comments were filed by: Mangata Networks (Mangata); The Satellite Companies (consisting of O3b Limited, SES Americom, Inc.; Telesat Canada; and WorldVu Satellites, Ltd.) (together, The Satellite Companies); AT&T Services, Inc. and Verizon Communications, Inc. (jointly, AT&T and Verizon); Space Exploration Holdings (SpaceX); Kuiper Systems LLC (Kuiper); Viasat, Inc. (Viasat); and DIRECTV, LLC and Hughes Network Systems, LLC (jointly, DIRECTV and EchoStar).

[43] Reply comments were filed by: AT&T and Verizon; The Satellite Companies; Kuiper; SpaceX; DIRECTV and EchoStar; and Viasat.

[44] Parties that filed comments, reply comments, and *ex partes* in the proceeding are listed in Appendix C.

[45] *See* Letter from Catherine Kuersten, Kuiper Systems LLC, to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-273 (filed July 20, 2023) (Kuiper July 2023 *Ex Parte*); Letter from David Goldman, Space Exploration Holdings, LLC, to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-271 (filed Oct. 11, 2023); Letter from Jarrett S. Taubman & Christopher D. Blair, Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-271 (filed Oct. 23, 2023); Letter from Catherine Kuersten, Kuiper Systems LLC, and Gerald Adams, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-

(continued….)

of which were received after the close of WRC-23, with parties calling attention to the adopted resolutions for the 17 GHz band.[46] Notably, parties filing post-WRC-23 *ex partes* agree that the actions taken by WRC-23 provide a foundation for Commission action to facilitate domestic NGSO FSS operations in the 17 GHz and, in fact, resolve specific concerns raised in the earlier comment cycle.[47]

10. Accordingly, for the reasons discussed herein, we permit an NGSO FSS downlink allocation in the 17 GHz band, subject to technical conditions, in furtherance of the Commission's goals of promoting efficient use of the spectrum, competition, and innovation, and providing consumers with access to advanced telecommunications services. In this Report and Order, we first address the respective allocations for the 17.3-17.7 GHz and 17.7-17.8 GHz bands followed by the technical components and conditions adopted specific to NGSO FSS downlink operations.

III. DISCUSSION

A. Permitting NGSO FSS Transmissions in the 17.3-17.8 GHz Band

11. The Ka-band[48] is used by FSS operators to provide satellite-based broadband access services using high-throughput satellites.[49] After review of the record, in this Report and Order, we adopt modifications to the U.S. Table and non-Federal government footnotes for NGSO FSS downlink transmission in the 17.3-17.8 GHz band to provide a contiguous 1300 MHz of spectrum[50] for NGSO FSS downlink operations.[51] We permit FSS downlinks from NGSO FSS systems to operate in the 17.3-17.8

330, 22-273 (filed Nov. 22, 2023); Letter from Catherine Kuersten, Kuiper Systems LLC, and Gerald Adams, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-273 (filed Jan. 22, 2024); Letter from Jarrett S. Taubman and Christopher D. Blair, Viasat, Inc., to Marlene H. Dorth, Secretary, FCC, SB Docket Nos. 20-330, 22-273 (filed Feb. 8, 2024) (Viasat Feb. 2024 Letter); Letter from Brenna Sparks, DIRECTV, LLC to Marlene H. Dortch, Secretary, FCC, SB Docket No. 22-273 (filed Feb. 28, 2024) (EchoStar Feb. 2024 Letter); Letter from Catherine Kuersten, Kuiper Systems LLC, to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-273 (filed Mar. 19, 2024) (Kuiper Mar. 2024 *Ex Parte*); Letter from Catherine Kuersten, Kuiper Systems LLC, to Marlene H. Dortch, Secretary, FCC, SB Docket No. 22-273 (filed May 10, 2024) (Kuiper May 2024 *Ex Parte*); Letter from Jameson Dempsey, Space Exploration Holdings, LLC, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-273 at 2 (filed Sept. 19, 2024) (SpaceX Sept. 2024 *Ex Parte*); Letter from Raquel Noriega, AT&T Services Inc., and Daudeline Meme, Verizon, to Marlene H. Dortch, FCC, IB Docket No. 22-273 at 5-6 (filed Sept. 19, 2024) (AT&T and Verizon Sept. 2024 *Ex Parte*); Letter from Catherine Kuersten, Kuiper Systems LLC, to Marlene H. Dortch, Secretary, FCC, SB Docket Nos. 20-330, 22-273 (filed Sept. 23, 2024) (Kuiper Sept. 2024 Letter).

[46] *See* Kuiper & SpaceX Jan. 22, 2024 Letter; Viasat Feb. 2024 Letter; EchoStar Feb. 2024 Letter; Kuiper Mar. 2024 *Ex Parte*.

[47] *See* Viasat Feb. 2024 Letter; *See* SpaceX and Kuiper Jan. 22, 2024 Letter at 2.

[48] The Ka-band is generally considered to be the 17.3-20.2 GHz and 27.0-30.0 GHz bands. For the FSS, the conventional Ka-band is defined as the 18.3-18.8 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.35-28.6 GHz (Earth-to-space), and 29.25-30.0 GHz (Earth-to-space) frequency bands, which the Commission has previously designated as primary for GSO FSS operation. 47 CFR § 25.103.

[49] In high-throughput systems, end user terminals uplink to space stations on one set of frequencies, and the space station downlinks traffic to earth station terminals (and back into the Internet backbone) using a different set of frequencies. The satellites in these systems typically use spot-beam technology and high-order frequency re-use to significantly increase capacity and spectral efficiency. *See 17 GHz GSO Order* at para. 9.

[50] *See, e.g.*, Kuiper Comments at 8, Table 2.

[51] Non-Federal government footnotes consist of the letters "NG" followed by one or more digits and denote a stipulation applicable only to non-federal operations. They only appear in the non-Federal portion of the U.S. Table. 47 CFR § 2.105(d)(5)(iii).

GHz band on a co-primary basis[52] with GSO FSS operations and on a co-primary basis with other primary services operating in the band. We also permit NGSO FSS receiving earth stations to operate in the 17.7-17.8 GHz band on an unprotected basis with respect to terrestrial fixed service operations. As discussed herein, we modify section 2.106(d)(58)(i) (non-federal government footnote NG58 of the U.S. Table) by removing the prohibition on NGSO FSS downlink operations in the 17.3-17.8 GHz band. We additionally modify section 2.106(d)(58)(iv) (non-federal government footnote NG58 of the U.S. Table) to authorize NGSO FSS receiving earth stations in the 17.7-17.8 GHz band, subject to the condition that such receiving earth stations must operate on an unprotected basis with respect to non-federal fixed-service stations operating in the band.

12. We discuss the 17.3-17.7 GHz band and 17.7-17.8 GHz band separately in the following sections.

1. NGSO FSS Transmissions in the 17.3-17.7 GHz Band

13. The 17.3-17.7 GHz band is allocated on a co-primary basis in the U.S. Table to FSS uplink operations (limited to feeder links for the BSS (DBS)), FSS downlink operations and BSS (17/24 GHz BSS).[53] The *17 GHz GSO Order* extended use of the band to FSS downlinks, limited to GSO FSS networks, on a co-primary basis with the incumbent users of the band, feeder links for DBS networks, and "reverse band" use for the downlink portion of 17/24 GHz BSS operations.[54] The Commission concluded that FSS downlink communications are technically similar to DBS/BSS communications, and thus permitting GSO FSS operations in the band was in the public interest to use the band more intensively and efficiently while also providing additional downlink capacity for GSO fixed satellite communications.

14. In the *17 GHz NGSO Notice*, the Commission sought comment on its proposal to make the 17.3-17.7 GHz band available for NGSO FSS systems downlink, similar to the actions taken with regard to GSO FSS operations in the *17 GHz GSO Order*.[55] The *17 GHz NGSO Notice* further sought technical data and studies from commenters to help determine how an NGSO FSS downlink allocation in the band would facilitate efficient NGSO FSS operations, what technical rules would be needed for DBS/BSS, GSO FSS, and terrestrial services, and whether any EPFD or other limits would be needed to protect existing and incumbent operations.[56]

15. The record in this proceeding supports allocating the 17.3-17.7 GHz band for NGSO FSS downlink operations.[57] Commenters assert that such an allocation is in the public interest because it would establish a contiguous 1300 MHz of spectrum for NGSO FSS services, resulting in more efficient use of the 17 GHz band, increased competition, and increased quality and availability of satellite broadband services, thus helping to close the digital divide.[58] O3b Limited and SES Americom, Inc., Telesat Canada, and WorldVu Satellites, Ltd. (collectively, "the Satellite Companies") state that this allocation will serve the public interest by mitigating spectrum constraints and affording consumers

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[52] A service designated as co-primary must share operations with other services designated as co-primary in the frequency band on a co-equal basis. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency bands for Broadcast Satellite Service Use*, Notice of Proposed Rulemaking, 13 FCC Rcd 19923, 19925, n.4 (1998).

[53] 47 CFR § 2.106(d)(58)(i)-(ii).

[54] *17 GHz GSO Order* at para. 13.

[55] *17 GHz NGSO Notice* at para. 76.

[56] *Id.* at para. 78.

[57] *See* SpaceX Comments at 5; Kuiper Comments; Mangata Comments at 3; The Satellite Companies Comments at 2; Viasat Feb. 2024 Letter at 2.

[58] *See* SpaceX Comments at 2; Kuiper Comments at 10.

greater access to satellite-enabled services.[59] Kuiper agrees and further adds that increasing the availability and quality of satellite broadband services will mitigate the disparate impacts on rural and impoverished communities.[60] Kuiper notes that the *17 GHz GSO Order* addressed "major technical and practical concerns regarding coexistence between FSS downlinks and incumbent communications, many of which are common to NGSO *and* GSO systems," and the Commission concluded that the technical rules adopted were sufficient to prevent interference and promote sharing in the band even without a Region 2 allocation for FSS downlinks.[61] Commenters also note that studies prepared in advance of WRC-23 measuring the feasibility of sharing the 17 GHz band with both FSS GSO and NGSO along with existing incumbent services confirm that NGSO FSS operations are fully compatible with other 17 GHz band services and that existing frameworks are in place to support coexistence among these services.[62]

16. Some commenters raised concerns with the Commission adopting an NGSO FSS allocation in the 17 GHz band prior to any resolutions adopted at WRC-23, arguing that doing so would be premature and instead recommending that "awaiting international adoption is necessary to remain 'consistent with Commission precedent.'"[63] However, some commenters originally opposed to adopting an FSS allocation now acknowledge that, following the adopted WRC-23 Region 2 NGSO FSS downlink allocation in the 17 GHz band, the proposed domestic allocation in the band is in alignment with both international policy and the public interest, but reiterate calls to adopt technical safeguards to protect GSO FSS and BSS operations.[64] Viasat initially argued that NGSO stakeholders' comments failed to establish an adequate basis for allowing NGSO FSS operations in the 17.3-17.8 GHz band, but pointed to the more stringent protections of GSO networks in Article 22 of the ITU Radio Regulations and advocated that a better approach would be for the Commission to factor the outcomes of WRC-23 into its consideration of appropriate technical limits for the 17.3-17.8 GHz band.[65] Viasat more recently asserts that the outcomes of WRC-23 "provide useful input into the Commission's own decision-making process with respect to potential NGSO FSS operations in the 17 GHz band," and that the actions taken at WRC-23 in fact "provide a basis for subsequent action by the Commission to facilitate domestic NGSO FSS operations within the 17 GHz band."[66]

17. Satellite operators further support allocating the 17.3-17.7 GHz band to NGSO FSS downlink operations on a co-primary basis.[67] These commenters argue that a co-primary allocation is justified to support technological satellite innovation and swift deployment of commercially viable

[59] The Satellite Companies Comments at 3.

[60] Kuiper Comments at 2.

[61] *Id*. at 8-9, citing *17 GHz GSO Order* at para 14, n. 61.

[62] *See*, *e.g.*, The Satellite Companies Comments at 5; SpaceX Comments at 3; Kuiper Comments at 2.

[63] *See* Viasat Comments at 5 (asserting that any Commission action to permit NGSO FSS operations in the 17.3-17.7 GHz band before the ITU allocates and establishes limits for the band would be premature); DIRECTV and EchoStar Comments at 4 (stating that "awaiting international study cycles and allocations is consistent with Commission precedent" and that "waiting until after the WRC-23 and subsequent revisions to international allocations would obviate the need to address [international coordination] requirements"), citing AT&T Reply Comments, Docket No. 20-330, at 14 (March 18, 2021) (noting that international allocations and study cycles preceded national allocations in the 50.4-51.4, 18.3-18.6 GHz, 18.8-19.4 GHz, and 19.6-20.2 GHz and Ka-band ESIM proceedings).

[64] Viasat Feb. 2024 Letter at 1; EchoStar Feb. 2024 Letter at 1 (stating, "These concerns over the potential for harmful interference were expressly recognized at WRC-23 which modified 5.517 to be applicable to the 17.3-17.8 GHz band.").

[65] Viasat Reply Comments at 5-6.

[66] Viasat Feb. 2024 Letter at 1.

[67] *See* SpaceX Comments at 2; Mangata Comments at 4.

services while simultaneously helping to mitigate spectrum constraints.[68] GSO operators oppose a co-primary allocation, instead arguing that the Commission should allocate the 17.3-17.7 GHz band on only either a secondary or unprotected basis to protect GSO FSS and BSS operations and ensure that incumbent GSO operators are not unduly impacted by the addition of NGSO FSS systems in the band.[69] DIRECTV and EchoStar argue that a secondary or unprotected basis, as applicable, is consistent with both ITU Article 22.2 and the Commission's rules requiring NGSO systems to protect GSO systems from interference, and a secondary allocation would ensure that incumbent GSO FSS operations are not unduly impacted or precluded by NGSO systems in the 17 GHz band.[70] NGSO operators, however, assert that GSO FSS systems are presently afforded significant protections under section 25.289 of the Commission's rules[71] and Article 22 of the ITU Radio Regulations, and are also given priority over NGSO FSS in other domestic spectrum band plans, thus bolstering the need for equal status of NGSO and GSO FSS in the 17 GHz band.[72] These commenters argue that a co-primary allocation for downlink spectrum in the 17 GHz would balance the uplink and downlink spectrum available to NGSO FSS systems while encouraging more robust broadband service offering and promoting competition across NGSO, GSO, and terrestrial fixed services to provide more options for connectivity.[73]

18. We conclude that it would serve the public interest to allocate the 17.3-17.7 GHz band to NGSO FSS downlink operations on a co-primary basis with incumbent services. We find that NGSO FSS downlinks in the 17 GHz band are compatible with incumbent services, specifically GSO FSS downlinks, feeder links for DBS networks, and "reverse band" use for the downlink portion of 17/24 GHz BSS operations.[74] Further, we find that the technical measures adopted in this Order, as discussed herein,[75] in combination with existing Commission and ITU frameworks requiring NGSO FSS protection of GSO systems and coordination, provide sufficient interference protection to GSO FSS systems. We

[68] *See* The Satellite Companies Comments at 2-3; SpaceX Reply Comments at 3-4; Mangata Comments at 4; Kuiper Reply Comments at 7 (asserting that a co-primary and co-equal allocation would promote robust competition and "level the playing field among providers of satellite-based broadband services").

[69] DIRECTV and EchoStar Reply Comments at 2 (asserting that GSOs rely on the 17 GHz band for FSS uplink transmission of programming to DBS space stations and BSS downlink transmissions directly to consumers, and that a secondary or unprotected basis vis-à-vis GSO services is consistent with the ITU Radio Regulations to protect GSO FSS and BSS operations); Viasat Reply Comments at 6 (proposing that if the Commission does adopt an NGSO FSS allocation in the 17 GHz band, any NGSO system using the 17.3-17.8 GHz band should be required to operate on an unprotected, non-interference basis vis-à-vis GSO FSS networks).

[70] *See* DIRECTV & EchoStar Reply Comments at 5, citing *17 GHz FSS Order* at para. 39.

[71] 47 CFR § 25.289, reading: "Unless otherwise provided in this chapter, an NGSO system licensee must not cause acceptable interference to, or claim protection from, a GSO FSS or GSO BSS Network. An NGSO FSS licensee operating in compliance with the applicable equivalent power-flux density limits in Article 22, Section II of the ITU Radio Regulations (incorporated by reference, § 25.108) will be considered as having fulfilled this obligation with respect to any GSO network."

[72] *See* SpaceX Comments at 2 (noting that NGSOs currently share a limited amount of Ka-band spectrum which is 300 MHz less than the available uplink spectrum, creating a bottleneck on NGSOs' ability to provide high-capacity, low-latency broadband services); Kuiper Comments at 12-13 (stating that NGSO FSS operators can utilize 300 MHz less downlink spectrum than uplink spectrum in the Ka-band, with 2,500 MHz of spectrum allocated in the 27.5-30.0 GHz band for uplink compared to 2200 MHz for downlink in the 17.8-18.6 GHz and 18.8 GHz bands, and the 200 MHz in the 19.4-19.6 GHz band available to NGSO FSS is restricted to NGSO MSS feeder links); *see also* The Satellite Companies Reply Comments at 5-6 (noting that the Ka-band plan grants GSO FSS systems priority over NGSO FSS systems, and as NGSO and GSO FSS operations both assert the need for more FSS downlink spectrum, neither should receive priority over the other in this band to ensure that the 17 GHz band spectrum can meet the needs of both system types).

[73] *See* SpaceX Comments at 2; Kuiper Comments at 12-13.

[74] This is consistent with the determination in the *17 GHz GSO Order* at para 13.

[75] *See infra* Section III.B.

disagree with concerns that a co-primary allocation for NGSO FSS system will preclude GSO FSS operators from the 17 GHz band.[76] We conclude that a co-primary allocation for NGSO FSS operations will support the most efficient use of the 17 GHz band spectrum by aligning this allocation with adjacent bands while mandating protection of GSO FSS operators with the technical protections within those bands.

19. In addition to providing greater bandwidth for services to consumers across the country, this allocation will provide increased communications capability to unserved and underserved areas, help to close the digital divide, and ensure that this valuable spectrum band is used in the most efficient and effective manner. We note that permitting NGSO FSS downlink services in the 17 GHz band is consistent with the modifications to the International Table and aligning the U.S Table with the International Table will serve the public interest by providing regulatory certainty and consistency with operations in Region 2. Accordingly, we modify non-Federal government footnote NG58(i) to permit NGSO FSS downlink operations in the 17.3-17.7 GHz band on a co-primary basis by removing the prohibition on NGSO FSS downlink operations in the 17.3-17.8 GHz band.[77]

2. NGSO FSS Transmissions in the 17.7-17.8 GHz Band

20. The International Table allocates the 17.7-17.8 GHz band segment in Region 2 to terrestrial fixed service, FSS in both directions and to BSS on a primary basis, and to the mobile service on a secondary basis.[78] In the United States, the band is allocated to the non-federal terrestrial fixed service and to FSS uplink and downlink operations on a primary basis.[79] The Commission added a limitation in footnote NG58 to the U.S. Table in the *17 GHz FSS Order* stating that in the band 17.7-17.8 GHz, earth stations in the fixed-satellite service may be authorized for the reception of GSO FSS emissions, subject to the condition that these earth stations shall not claim protection from transmissions of non-Federal stations in the fixed service that operate in that band.[80]

21. Commenters supporting NGSO FSS downlink operations in the 17.3-17.7 GHz band generally also support permitting NGSO FSS downlink operations on an unprotected basis vis-à-vis terrestrial fixed services in the 17.7-17.8 GHz band.[81] Terrestrial fixed providers express concerns about extending the sharing of the 17.7-17.8 GHz band to NGSO operations and argue that further technical study is needed to determine whether NGSO operations can operate concurrently with and protect incumbent fixed service operations in the 17.7-17.8 GHz band.[82] AT&T and Verizon argue that the technical studies and data to support an NGSO FSS downlink do not affirmatively prove that NGSO FSS sharing of the 17.7-17.8 GHz band is feasible.[83] However, they propose that should NGSO FSS operations be permitted in the 17.7-17.8 GHz band, the Commission should do so on a secondary and unprotected basis relative to terrestrial fixed service operations.[84] The terrestrial fixed providers also

[76] Commenters pointing to the protections within the ITU Radio Regulations, such as Article 22 of the Radio Regulations requiring that NGSO systems shall not cause unacceptable interference to GSO operations are instructive, as NGSO operators are held to a higher international standard to protect GSO FSS and other incumbent operators from "unacceptable" rather than "harmful" interference in Region 2. *See* Viasat Reply Comments at 3-4.

[77] 47 CFR § 2.106(d)(58)(i).

[78] 47 CFR § 2.106(a); *see* ITU Radio Regulations, Article 5.

[79] 47 CFR § 2.106(a).

[80] 47 CFR § 2.106(d)(58)(iv); *17 GHz GSO Order* at para. 18.

[81] *See* Mangata Comments at 6; The Satellite Companies Comments at 8; DIRECTV and EchoStar Comments at 1; Kuiper Comments at 16; Kuiper Reply Comments at 7; SpaceX Reply Comments at 6-7; Satellite Companies Reply Comments at 7.

[82] AT&T and Verizon Comments at 4.

[83] AT&T and Verizon Reply Comments at 6.

[84] *Id*. at 4-5; AT&T and Verizon Comments at 3.

agree with DIRECTV and EchoStar that NGSO constellations should be required to submit a showing that they can share the 17.7-17.8 GHz band without interference.[85]

22. We find that permitting NGSO FSS downlink operations in the 17.7-17.8 GHz band is in the public interest. Earth stations receiving in the 17.7-17.8 GHz band are not entitled to protection from the terrestrial fixed service, and NGSO FSS downlink operations therefore will not disrupt the balance between facilitating FSS operations and protecting incumbent use of the 17.7-17.8 GHz band. This action is consistent with our decision to permit GSO FSS downlink operations on a co-primary basis.[86] Similar to the actions taken with regard to GSO FSS systems,[87] we permit authorization of earth stations receiving transmissions from NGSO FSS space stations in the 17.7-17.8 GHz band on an unprotected basis vis-à-vis the terrestrial fixed service (both existing and future fixed service operations) and on a shared basis with GSO FSS space stations, discussed in the following section. This is consistent with the Commission's goal to use scarce spectrum resources intensely in an efficient and effective manner. We modify footnote NG58(iv) of the U.S. Table of Allocations for the reasons discussed above.[88]

B. Technical Measures to Prevent Harmful Interference in the 17.3-17.8 GHz Band

23. In the *17 GHz NGSO Notice*, the Commission sought comment on the technical rules needed to protect DBS and BSS, GSO FSS, and terrestrial services should NGSO FSS downlink operations be permitted in the 17 GHz band.[89] The Commission asked whether the current EPFD limits in the adjacent bands are sufficient to protect DBS and BSS stations and GSO FSS stations, or if there are methods of protection other than EPFD limits that would be more effective.[90] We adopt the technical measures and conditions detailed below to facilitate operations between NGSO FSS downlink services and incumbent providers and create a more consistent regulatory framework in the 17.3-17.8 GHz band.[91]

1. Measures to Facilitate Space-to-Earth Operations of 17/24 GHz BSS and FSS

24. In the *17 GHz GSO Order*, the Commission adopted a number of technical rules to prevent harmful interference and facilitate intra-service operations between 17.3-17.8 GHz FSS space stations and inter-service operations between FSS and 17/24 GHz BSS space stations operating in the downlink direction.[92] The Commission extended a number of requirements that were already applicable to 17/24 GHz BSS space stations transmitting in the band to 17.3-17.8 GHz band GSO FSS space

[85] AT&T and Verizon Reply Comments at 7.

[86] *See 17 GHz GSO Order* at para. 16.

[87] *See id*. at paras. 59-66.

[88] 47 CFR § 2.106(d)(58).

[89] *17 GHz NGSO FSS Notice* at para. 78.

[90] *Id*.

[91] We note that, as with any ongoing efforts to promote efficient and effective spectrum sharing, we will continue to monitor any international technical developments and may reevaluate the Commission's rules considering any such developments. *See* SpaceX Sept. 2024 *Ex Parte* at 2 (requesting clarification that any EPFD protections adopted in this order be subject to the outcome of international efforts to modernize EPFD limits and parallel domestic efforts to update GSO-NGSO spectrum sharing rules); AT&T and Verizon Sept. 2024 *Ex Parte* at 5 (requesting clarification that the Commission will revisit the NGSO FSS PFD levels and methodology for assessing aggregate interference if the ITU revises its coexistence regime between NGSO and GSO systems).

[92] *See 17 GHz GSO Order* at para. 20.

stations, with certain modifications.[93] In this Report and Order, we adopt the following modifications to the FSS technical requirements to account for NGSO FSS downlink operations in the 17.3-17.8 GHz band.

25. *Equivalent Power Flux Density Limits*. The Commission sought comment in the *17 GHz NGSO Notice* on whether the existing EPFD[94] limits in the adjacent 17.8-18.6 GHz bands are sufficient to protect DBS and BSS stations, GSO FSS stations, and terrestrial fixed services in the 17.3-17.8 GHz band, or if there are alternative methods of protection, other than EPFD limits, that would be better applied in the 17.3-17.8 GHz band.[95]

26. EPFD limits have been established by the ITU Radio Regulations as a technical mechanism to allow NGSO and GSO systems to operate in a compatible manner.[96] There is broad support in the record that BSS and GSO FSS downlink services can be protected through the use of existing EPFD limits in the adjacent 17.8-18.6 GHz band. The Satellite Companies assert that international studies show that NGSO FSS operations are compatible with other 17 GHz band services and support the Commission extending the downlink EPFD limits outlined in Article 22.2 and in Table 22-1B to the 17.3-17.8 GHz band to protect BSS and GSO FSS downlink operations.[97] Kuiper proposes that we extend the current rules requiring compliance with the applicable EPFD limits to the 17 GHz band and agrees that extending the EPFD downlink limits to the 17.3-17.7 GHz band would ensure that NGSO FSS systems do not cause unacceptable interference to BSS networks.[98] Kuiper states this would result in even lower interference levels to BSS receiving earth stations than under the current rules.[99] SpaceX argues that EPFD limits are not necessary to ensure that NGSO FSS systems can operate without causing interference, but proposes that, if the Commission does employ EPFD limits, it should only extend international limits that apply to protect BSS receive stations.[100] GSO FSS operators agree and support extending the ITU EPFD limits adopted at WRC-23.[101] Viasat recommends that we consider adopting EPFD limits for the 17.3-17.8 GHz band, and supports extending the Article 22 EPFD limits to the 17 GHz band in alignment with WRC-23, should the Commission permit NGSO FSS operations in the 17

[93] *See id*. at paras. 21-31 (adopting an orbital spacing requirement between transmitting FSS space stations and 17/24 GHz BSS stations, regional PFD limits for transmitting FSS space stations, and polarization and frequency re-use requirements for the 17 GHz band).

[94] Equivalent power flux-density is defined as the sum of the power flux-densities produced at a geostationary-satellite system receive station on the Earth's surface or in the geostationary orbit, as appropriate, by all the transmit systems within a non-geostationary satellite system, taking into account the off-axis discrimination of a reference receiving antenna assumed to be pointing in its nominal direction.

[95] *17 GHz NGSO FSS Notice* at para. 78.

[96] *See, e.g.,* ITU Radio Regulations, Resolution 76 (REV.WRC-23) – Protection of geostationary fixed-satellite and geostationary broadcasting-satellite service networks from the maximum aggregate equivalent power-flux density produced by multiple non-geostationary fixed-satellite service systems in frequency bands where equivalent power flux-density limits have been adopted, *considering b)* (stating that the EPFD limits adopted in Article 22 applicable to NGSO FSS systems are to ensure that such limits "provide adequate protection to GSO networks without placing undue constraints on any of the systems and services sharing these frequency bands"); *see also Int'l Dark-Sky Ass'n, Inc., v. FCC*, No. 22-1337 at 13 (D.C. Cir. Jul. 12, 2024) (stating, "The ITU limits are highly technical and based on the threshold at which conflicting radio waves begin to interfere with satellite performance.").

[97] The Satellite Companies Comments at 6-7.

[98] Kuiper Reply Comments at 4-5.

[99] Kuiper Comments at 18, 20.

[100] SpaceX Comments at 7; SpaceX Reply Comments at 11.

[101] DIRECTV & EchoStar Comments at 6-7; Viasat Comments at 5 (recommending that the Commission explore adopting EPFD limits, stating "although EPFD limits are an imperfect solution, they could nevertheless represent a reasonable default mechanism for GSO-NGSO sharing in the 17.3-17.8 GHz band segment).

GHz band.[102] DIRECTV and EchoStar also support applying the EPFD limits in the adjacent 17.8-18.6 GHz band to the 17.3-17.7 GHz band, support extending the EPFD limits to the 17.7-17.8 GHz band, and further propose that the Commission should require NGSO FSS operators to certify EPFD compliance for entire constellations, submit technical data and calculations of EPFD compliance for public review, and obtain a finding of EPFD compliance from either the Commission or the ITU prior to commencing operations.[103]

27. Section 25.146(a)(2) of the Commission's rules already require that NGSO FSS space stations comply with any EPFD levels in Article 22, Section II, and Resolution 76 of the ITU Radio Regulations.[104] Section 25.289 further requires that NGSO systems must not cause unacceptable interference to, or claim protection from, a GSO FSS or GSO BSS network, and that NGSO FSS operators in compliance with the applicable ITU EPFD limits will be considered to have fulfilled its obligation to protect GSO networks from interference.[105] Article 22.2 requires that NGSO systems not cause unacceptable interference to and, unless otherwise specified, shall not claim protection from GSO networks in the FSS and the BSS operating in accordance with the Radio Regulations.[106] WRC-23 modified footnote 5.517 of the International Table to require that, in Region 2, use of the fixed satellite (space-to-Earth) service in the 17.3-17.8 GHz band shall not cause harmful interference to nor claim protection from assignments in the BSS operating in conformity with the Radio Regulations.[107] In tandem with the FSS downlink allocation in the 17 GHz band, WRC-23 revised Table 22-1B of the Radio Regulations to extend the limits to the EPFD downlink radiated by NGSO FSS systems in the 17.3-17.7 GHz band in Region 2.[108] WRC-23 added an additional provision to Table 22.1B to state that operators of NGSO FSS systems providing service in Region 2 must meet the limits of Table 22-1B in the 17.3-17.7 GHz band with respect to GSO systems in the BSS.[109]

28. We adopt the ITU EPFD limits for the 17.3-17.7 GHz segment of the 17 GHz band and extend these limits to apply to the 17.7-17.8 GHz band to ensure efficient NGSO FSS downlink operations and sufficient technical protections for incumbent operators throughout the entire 17 GHz band. We accordingly modify section 25.146(a)(2) of the Commission's rules to state that the ITU EPFD limits that apply to NGSO FSS systems operating in the 17.3-17.7 GHz band shall also apply to NGSO FSS systems operating in the 17.7-17.8 GHz band.[110] We find that it would serve the public interest to align the domestic EPFD limits with those adopted in the ITU Radio Regulations to provide certainty for NGSO FSS operators while protecting incumbent systems.[111] These limits apply to NGSO operations in

[102] Viasat Comments at 5; Viasat Feb. 2024 Letter.

[103] *See* DIRECTV & EchoStar Comments at 8; DIRECTV & EchoStar Feb. 2024 Letter at 2.

[104] 47 CFR § 25.146(a)(2) (incorporating by reference the 2016 ITU Radio Regulations at 47 CFR § 2.108(c)(3)).

[105] 47 CFR § 25.289.

[106] ITU Radio Regulations, Article 22 at § 2.

[107] *Id*., Article 5 at 5.517 (WRC-23).

[108] *See id*., Article 22 at Table 22-1B (Rev.WRC-23).

[109] *Id*. at 22.5C.13 (WRC-23).

[110] Because the EPFD limits adopted at WRC-23 applicable to the 17.3-17.7 GHz band are identical to those previously applicable to operations within the 17.8-18.4 GHz band, for purposes of our rules we refer to the 2016 EPFD limits applicable to operations within the 17.8-18.4 GHz band as previously incorporated by reference in section 25.146(a)(2) (*see* 47 CFR § 25.108).

[111] *See Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters,* Report and Order, IB Docket No. 16-408, 32 FCC Rcd 7809, 7819, para. 35 (2017) (*2017 Ka-Band Order*) (adopting ITU EPFD limits in the 17.8-30 GHz band and concluding that it is in the public interest to "harmonize the Commission's rules with international regulations and provide greater certainty for NGSO FSS operators.").

our region internationally,[112] and the record in this proceeding supports adoption of the same international EPFD limits domestically. With respect to facilitating NGSO and GSO coordination efforts, we agree with commenters' assertions that the Commission has frameworks in place for sharing and coordination between NGSO and GSO operators, and we decline to modify such existing frameworks in favor of adopting an additional compliance approval process in this proceeding. As discussed in greater detail in section II(B)(3) of this Report and Order, we permit operators to enter into coordination agreements consistent with our current framework for NGSO and GSO spectrum sharing.

29. *Downlink Power Limits*. The Commission has typically applied downlink power flux density (PFD)[113] limits for space stations transmissions to facilitate both inter-service and intra-service sharing.[114] Under the Commission's rules, NGSO FSS systems operating in the 10.7-30.0 GHz bands are required to comply with applicable ITU PFD limits in Article 21 of the Radio Regulations, but NGSO FSS systems have not been authorized for domestic operation in the 17 GHz band.[115] In the *17 GHz GSO Order*, the Commission adopted rules to apply regional PFD limits for GSO FSS space stations in the 17.3-17.7 GHz band to harmonize with the limits applicable to 17/24 GHz BSS systems and to adequately facilitate both inter-service and intra-service sharing.[116] The Commission also clarified that earth stations operating FSS downlinks in the 17.7-17.8 GHz band shall not claim protection from terrestrial fixed service operations in that band, and that the adopted PFD limits will apply vis-à-vis fixed services in the 17.7-17.8 GHz band or adjacent 17.8-18.3 GHz band.[117]

30. NGSOs assert that taking the same approach to NGSO FSS services is appropriate and supports adopting the ITU PFD limits to protect terrestrial fixed services operating in the 17.7-17.8 GHz segment.[118] The Satellite Companies support relying on the Commission's existing rules requiring NGSO systems to comply with the applicable Article 21 PFD limits and operate on an unprotected basis with respect to fixed services in the band.[119] Mangata similarly suggests extending the same PFD limits adopted for GSO satellite operations to NGSO FSS systems, rather than limit use of the 17 GHz band, and says that while NGSO systems may need to adjust operations to meet these limits, the PFD limits ensure that terrestrial fixed services will not experience harmful interference at equivalent arrival angles.[120] Kuiper supports applying the PFD limit in the 17.7-17.8 GHz band and argues that the Commission has already resolved concerns about potential interference in the 17.3-17.8 GHz band when it adopted the technical framework for GSO FSS operations in the *17 GHz GSO Order,* specifically the coordination requirements and PFD limits, which includes an exhaustive record proving that NGSO FSS

[112] 47 CFR § 25.146(a)(2), modified as follows: "Any applicable equivalent power flux-density levels in Article 22, Section II, and Resolution 76 of the ITU Radio Regulations (both incorporated by reference, § 25.108), except that for operations in the 17.3-17.8 GHz band, applicants must certify that they will comply with the ITU equivalent power flux-density limits applicable to NGSO FSS system operations in the 17.8-18.4 GHz band."

[113] Power flux-density is the amount of power flow through a unit area within a unit bandwidth. The units of power flux density are those of power spectral density per unit area, namely watts per hertz per square meter. These units are generally expressed in decibel form as dB(W/Hz/m 2), dB(W/m 2) in a 4 kHz band, or dB(W/m 2) in a 1 MHz band. 47 CFR § 25.103.

[114] *See 17 GHz GSO Order* at para. 27.

[115] 47 CFR § 25.146(a)(1).

[116] 47 CFR §§ 25.140(a)(3), 25.140(b)(3); *see 17 GHz GSO Order* at paras. 27, 29. The Commission adopted the following specific regional limits: (1) In the region of the contiguous United States, located east of 100 West Longitude and including Alaska and Hawaii: -118/dBw/m²/MHz; and (2) In the region of the contiguous United States, located west of 100 West Longitude: -121 dBw/m²/MHz.

[117] *17 GHz GSO Order* at para. 30.

[118] Kuiper Comments at 17; SpaceX Reply Comments at 8; The Satellite Companies Comments at 5-6.

[119] The Satellite Companies Comments at 8, citing 47 CFR § 25.146(a)(1).

[120] *See* Mangata Comments at 5.

operations can coexist with other services in the 17 GHz band.[121] Further, Kuiper maintains that NGSO and GSO FSS systems already successfully share the adjacent 17.8-18.3 GHz band with fixed services because of the PFD limits in place.[122] Kuiper explains that, since interference levels would be nearly identical in the 17.7-17.8 GHz band, PFD limits should be adopted for the 17.7-17.8 GHz band as well where utilization by fixed services is even lower than in the adjacent band.[123] SpaceX agrees, and advocates that extending the ITU PFD limits applicable to the 17.7-19.3 GHz band to the 17.3-17.7 GHz band will enable NGSO FSS operators to share the band without causing harmful interference to existing operations while harmonizing the limits for NGSO FSS operations with existing limits for GSO FSS and BSS transmissions.[124] SpaceX further notes that NGSO operators will solely bear any interference impact to fixed operators, not the protected fixed services.[125] GSO operators did not comment on PFD limits in the 17.7-17.8 GHz band.

31. Kuiper additionally submitted a technical analysis simulating interference from NGSO FSS systems into fixed service systems in the band consistent with methodologies used in ITU Recommendations.[126] Kuiper's dynamic simulations show that the anticipated aggregate interference from combined NGSO FSS systems into fixed services systems is far below the ITU's recommended threshold limits,[127] demonstrating that these systems can coexist with fixed services in the 17.7-17.8 GHz band with little likelihood of interference.[128] Kuiper also cites operational factors that protect fixed service receivers, which combined with the dynamic interference-to-noise analysis, shows compatibility for fixed and NGSO FSS systems to co-exist in the 17.7-17.8 GHz band without risk of harmful interference from current or future NGSO FSS systems.[129] SpaceX supports Kuiper's study showing that the potential for interference from NGSO operations to fixed services is negligible and that the aggregate emissions of NGSO FSS systems will remain well below the statistical interference-to-noise limits specified by the ITU.[130]

32. Terrestrial fixed service providers AT&T and Verizon oppose applying the current PFD limits, arguing that these limits are outdated and do not account for the increase of NGSO satellite

[121] Kuiper Comments at 16.

[122] *See 2017 Ka-Band Order* at para. 30.

[123] *See* Kuiper July 2023 *Ex Parte* at 2, Attachment at 4 (showing that there are 2,200 fixed service links licensed in the U.S. in the 17.7-17.8 GHz band compared to 13,844 fixed service links licensed in the 17.8-18.3 GHz band and demonstrating that interference is further mitigated by differences in earth station placement).

[124] SpaceX Reply Comments at 8.

[125] SpaceX Oct. 2023 *Ex Parte* at 2.

[126] Kuiper July 2023 *Ex Parte* at 2-3 (citing Recommendation ITU-R SF. 1483).

[127] *Id*. at 3, Attachment at 5 (the dynamic interference analysis uses ITU-R Recommendation SF.1483 methodology and estimates the total aggregate interference from multiple NGSO FSS systems by simulating their emissions over time and computing the expected receive power levels into an FS system receive antenna to model the interference environment).

[128] Kuiper July 2023 *Ex Parte* at 3 (further noting that interference likelihood is further reduced to lower utilization in the 17.7-17.8 GHz band by the fixed service than in the 17.8-18.3 GHz band and by differences in earth station placement approaches).

[129] *See id*., Attachment at 3 (stating that NGSO systems operate at high elevation angles so that fixed service receivers never receive peak NGSO FSS downlink power levels into their main beams and further citing that terrestrial blockage, clutter, and atmospheric attenuation provide additional protection from NGSO FSS sidelobes at low elevation angles).

[130] SpaceX Oct. 2023 *Ex Parte* at 2.

authorizations in recent years or the differences in NGSO compared to GSO operations.[131] They claim that past records showing no interference to fixed services are not a reliable predictor for future interference and instead recommend that further study is needed before permitting shared NGSO FSS use of the 17.7-17.8 GHz band.[132] AT&T and Verizon also submitted a static analysis (FS Interference Analysis) based on calculations of interference-to-noise ratios to demonstrate the potential for aggregate interference into fixed service antennas from present and future NGSO FSS and GSO FSS operations.[133] These providers argue that the FS Interference Analysis shows that the aggregate interference calculation values could exceed the interference-to-noise thresholds adopted by the ITU and the Commission for protecting terrestrial fixed services in other frequency bands and therefore oppose relying on PFD limits to support an NGSO FSS allocation.[134]

33. We adopt the ITU PFD limits for NGSO FSS operations in the 17 GHz band, applying to the 17.7-17.8 GHz band and extending to the 17.3-17.7 GHz band, and accordingly modify section 25.146(a)(1) of the Commission's rules.[135] We find the technical studies and dynamic analyses in favor of adopting the current PFD limits more representative of real-world scenarios in demonstrating that the existing PFD limits will facilitate sharing of the 17.7-17.8 GHz band with minimal risk of interference to fixed service operations.[136] The Commission has previously determined that the PFD limits are effective in protecting terrestrial fixed services from interference, considering that satellite and terrestrial services have long co-existed in these bands using PFD limits without issue.[137] This is consistent with the lack of

[131] AT&T and Verizon Comments at 9-10; AT&T and Verizon Reply Comments at 4; AT&T and Verizon Sept. 2024 *Ex Parte* at 2.

[132] AT&T and Verizon Reply Comments at 4 (noting that there are no current interference problems with current FSS operations, but rather expressing concern that terrestrial fixed service providers will receive aggregate interference from future, larger NGSO systems such that further study on the potential impacts of more complex NGSO systems operating in the 17.7-17.8 GHz band is needed).

[133] *Id*. at 7, Attachment 1, Potential FSS Aggregate Interference into FS (explaining that the static analysis shows the potential for interference if NGSO systems operate at up to the highest ITU-R PFD limits).

[134] *Id*. at 7-8; AT&T and Verizon Sept. 2024 *Ex Parte* at 2-4.

[135] 47 CFR § 25.146(a)(1) is modified as follows: "Any applicable power flux-density levels in Article 21, Section V, Table 21-4 of the ITU Radio Regulations (incorporated by reference, § 25.108), except: (i) in the 19.3-19.4 GHz and 19.6-19.7 GHz bands applicants must certify that they will comply with the ITU power flux-density limits governing NGSO FSS systems in the 17.7-19.3 GHz band; and (ii) in the 17.3-17.7 GHz band, applicants must certify that they will comply with the ITU power flux-density limits governing NGSO FSS systems in the 17.7-17.8 GHz band."

[136] We find that Kuiper's dynamic analysis more accurately simulates the potential for real-world interference from NGSO FSS systems into fixed service systems because the assumptions underlying Kuiper's analysis more closely adhere to what has been filed with the Commission and at the ITU in terms of the potential number of NGSO satellites, power levels, and specific operating methodologies of planned systems. While these levels are lower than the adopted limits, the higher limits will allow for rain fade and other conditions which may require increased power for short periods of time. By comparison, the static analysis submitted by AT&T and Verizon assumes that 3.6% of the visible NGSO FSS satellites are operating both at the maximum power limits and serving the same area on a static basis, which is not representative of real-world dynamic operations. Further, AT&T and Verizon claim that the Kuiper analysis used an unrealistic deployment of FS stations by assuming an average antenna altitude of 0 meters instead of 700 meters. However, the difference in received PFD from these slightly elevated stations is negligible, at less than 0.1 dB. Although Kuiper's analysis does not include GSO emissions, including GSO emissions would not significantly change the outcome of the analysis due to the fact that the number of GSO systems in this band is very small compared to the number of NGSO systems. And since NGSO FSS operators will be using this band on an unprotected basis with respect to terrestrial fixed services, they must take action to address any interference to fixed operations.

[137] *17 GHz GSO Order* at para. 30 (addressing comments similarly suggesting that the Commission delay adopting ITU PFD limits in favor of further study without evidence from terrestrial fixed providers showing interference in

(continued….)

record evidence of interference regarding NGSO FSS systems in the adjacent 17.8-18.6 GHz band, and we find no evidence that would support deviating from the established limits in the 17.7-17.8 GHz band.[138] We additionally note that the Commission has previously determined that the ITU-R PFD limits in these bands are scalable to NGSO FSS systems, which integrate the number of satellites in a constellation, to more effectively protect fixed service operations.[139]

34. Adopting internationally consistent power limits simplifies compliance for both GSO and NGSO operators, as NGSO FSS space systems are not typically limited to U.S. systems and must meet this ITU PFD limits outside U.S. territory.[140] Further, we agree that the PFD limits in the 17 GHz band should be consistent with those applicable to the adjacent 17.8-18.3 GHz band and extend the PFD limits applicable in the 17.7-17.8 GHz band to the 17.3-17.7 GHz band to harmonize the limits for NGSO FSS operations with existing limits for GSO FSS and BSS transmissions and bolster protections for incumbent operators across the entire 17 GHz band.[141]

35. As discussed above, receiving NGSO FSS downlinks shall not claim protection from existing and future stations in the fixed service operating in the 17.7-17.8 GHz band and NGSO FSS operations must still comply with the PFD levels detailed in Article 21 of the ITU Radio Regulations.[142] We note that GSO FSS and the fixed service will share the 17.7-18.3 GHz band with NGSO FSS operating on an unprotected basis, and that the rules should be consistent throughout the adjacent

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either the 17.7-17.9 GHz band or 17.8-18.3 GHz band); *see also 2017 Ka-Band Order* at para. 30 (noting that the ITU PFD limits in the 17.7-19.7 GHz band "were derived after years of study").

[138] We further agree with Kuiper that the sharing environment in the 17 GHz band has been extensively studied both due to WRC-23 and by the Commission's authorization of GSO FSS downlinks in the 17 GHz band. Kuiper July 2023 *Ex Parte*, Attachment at 2. *See, e.g.*, *2017 Ka-Band Order* at para. 30 (adopting the ITU-R PFD limits for GSO and NGSO space stations, noting that there was no technical consensus among operators on an appropriate alternative PFD limit to apply in the U.S. and therefore the Commission did "not have a sufficient record to deviate from the internationally derived limits.").

[139] *See, e.g.*, *2017 Ka-Band Order* at para. 30 (stating, "Therefore, we will apply [in the 19.3-19.4 GHz and 19.6-19.7 GHz bands] the PFD limits in the 17.7-19.3 GHz band which do account for the number of satellites in the constellation," revising 47 CFR 25.146(a)(1) to apply the PFD limits applicable to the 17.7-19.3 GHz band to the 19.3-19.4 and 19.6-19.7 GHz bands to account for the number of satellites in a constellation).

[140] *See 2017 Ka-Band Order* at para. 30. This action is also consistent with the Commission's previous determinations that, where WRC has revised or redelegated spectrum allocations, the benefits of regulatory certainty for FSS and fixed service operators outweigh calls for delay based on questions of potential risk and will allow for investment and development in the band. *See, e.g.*, *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 Applications in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9 GHz-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*, IB Docket No. 97-9, Second Report and Order, 18 FCC Rcd 25428, 25434-35, para. 15 (2003).

[141] Terrestrial fixed providers will be further protected from potential interference from NGSO FSS systems by the EPFD limits adopted herein. While EPFD limits protect GSOs from potential interference, they also protect fixed providers because they limit the amount of power that an NGSO FSS system can emit in any one area.

[142] We decline to adopt AT&T and Verizon's proposal in their recent filing to alternatively require NGSO applicants for NGSO operations in the 17.7-18.3 GHz band to individually submit an aggregate interference analysis to the Commission for approval. *See* AT&T and Verizon Sept. 2024 *Ex Parte* at 5. There is no record at this time to support adopting separate Commission approval processes that would additionally burden applicants for operations in this band, without clear benefit to the protection of fixed services beyond what could be addressed through a PFD limit based on reasonable operational assumptions, which we adopt here. We find that the adoption of a PFD limit is a more effective and efficient way to enable sharing between these services, instead of creating additional procedural requirements for adjudication in every case.

bands.[143] We therefore extend the PFD limits to the 17.3-17.7 GHz segment of the 17 GHz band for NGSO FSS systems. Although the NGSO FSS allocation will be co-primary in the 17.3-17.8 GHz band and subject to the adopted PFD limits, earth stations operating in the FSS downlink in the 17.7-17.8 GHz band shall not claim protection from existing and future terrestrial fixed service operations.[144]

2. Measures to Mitigate Space Path Interference from NGSO FSS Downlinks

36. In the *17 GHz GSO Order*, the Commission adopted technical requirements applicable to GSO FSS space stations to mitigate space path interference[145] into DBS receivers.[146] In the 17.3-17.8 GHz reverse-band sharing environment, receiving DBS space stations are vulnerable to space path interference from nearby co-frequency 17/24 GHz BSS space station transmissions.[147] The Commission sought comment in the *17 GHz NGSO Notice* on any rules that may need to be modified to enable effective sharing with NGSO FSS downlink operations and account for any necessary technical requirements should the Commission permit an NGSO FSS downlink allocation in the 17.3-17.8 GHz band.[148]

37. *EPFD(is) Limits*. Similar to the above-discussed EPFD limits, WRC-23 modified Table 22-3 of Article 22 to extend the application of the inter-satellite equivalent power flux density (EPFD(is))[149] limits from the adjacent 17.8-18.4 GHz band to apply to the 17.3-17.7 GHz band in Regions 1 and 2.[150] WRC-23 additionally added a new footnote, 22.5F.4 to Table 22-3, which details limits to the EPFD(is) radiated by NGSO systems in the FSS in Region 2 in the 17.3-17.7 GHz band, requiring that NGSOs operating at any orbital position in Region 2 meet the EPFD(is) limits for the 17.3-17.7 GHz band with respect to a receiving space station in the BSS feeder link of Appendix 30A in all three

[143] We decline to adopt an alternative PFD limit of -115 dBw/m²/MHz for NGSO FSS (for all angles of arrival) operations in the 17.7-18.3 GHz band as proposed by AT&T and Verizon in their recent filing. *See* AT&T and Verizon Sept. 2024 *Ex Parte* at 5. This AT&T and Verizon proposed limit, which is specified in 47 CFR § 25.140(b)(3) for 17 GHz BSS space stations, was one of three PFD limits developed for 17 GHz BSS systems to accommodate rain fade for BSS receivers. It was not previously proposed in this proceeding and is not supported by any technical explanations or studies in the record for NGSO FSS operations. Moreover, this newly-proposed fixed PFD limit assumes antenna main-beam to main-beam coupling for all angles of arrival of the satellite signals which is not technically reasonable, since most NGSO systems do not start transmitting until they are at least 15 degrees above the horizon. Further, 47 CFR § 25.208(c) provides limits for GSO FSS operations in this band and is dependent upon the angle of arrival. We find that the limits adopted today using the ITU methodologies, which align with the limits in 47 CFR § 25.208(c), is a better model for setting the PFD limits for the NGSO FSS.

[144] *See* 47 CFR § 25.106(d)(iv).

[145] This type of interference may occur when the off-axis downlinked signals from one space station are detected by the receiving antenna of a nearby co-frequency space station. The severity of space path interference will depend on the transmitted signal power level, the off-axis gain discrimination characteristics of the transmitting and receiving antennas, and on the specific orientation of, and separation between, the transmitting and receiving antennas on both space stations. This latter factor in turn depends on various inter-dependent parameters including longitudinal separation and the inclination and eccentricity of both space station orbits. Management of space path interference is typically more challenging when a receiving DBS space station is located within a few tenths of a degree in orbital longitude from a transmitting co-frequency space station.

[146] *17 GHz GSO Order* at para. 33.

[147] Analogously, ground path interference arises between earth stations when the off-axis transmissions in the uplink direction of one service are received by a nearby co-frequency receiving earth station in another service.

[148] *17 GHz NGSO Notice* at para. 78.

[149] EPFD(is) are inter-satellite emissions from a NGSO satellite system into a GSO satellite system.

[150] ITU Radio Regulations, Article 22 at Table 22-3 (Rev.WRC-23).

Regions.[151]

38. Several commenters discussed the existing EPFD(is) limits detailed in the ITU Radio Regulations, now applicable to the 17.3-17.7 GHz band in Region 2, as an effective method to further protect all incumbent operators in the band from NGSO FSS downlink interference in the 17.3-17.8 GHz band.[152] Kuiper suggests that sharing between FSS feeder uplinks for DBS service, GSO FSS operations, and NGSO FSS downlink operations can be facilitated by applying the EPFD(is) limits in the adjacent 17.8-18.4 GHz band and by requiring coordination between certain DBS feeder uplink earth stations with individually licensed NGSO FSS receiving earth stations.[153] Kuiper and the Satellite Companies note that NGSO FSS space stations have already been permitted to operate NGSO FSS downlinks in Region 1 in the 17.3-17.8 GHz band under the ITU Radio Regulations and that space path interference has not occurred at regional boundaries.[154] Kuiper suggests that the Commission can incorporate the same proven solutions that have been applied in other frequencies and regions, like EPFD(is) limits, to successfully manage coexistence between NGSO FSS and incumbent operations in the 17.3-17.8 GHz band.[155] Further, commenters note that NGSO FSS downlinks already share spectrum with receiving DBS space stations in the 17.7-18.4 GHz band and, in Region 1, in the 17.3-17.7 GHz band, and that BSS space stations only receive protection in the 17.8-18.4 GHz band as a result of EPFD(is) limits.[156]

39. Commenters also agree that the EPFD(is) limits will offer protection to GSO FSS operators, extending beyond protecting DBS feeder links and BSS incumbent services. DIRECTV and EchoStar specifically support extending the EPFD(is) limits in the adjacent band to ensure protection of BSS downlinks and GSO FSS operations, asking the Commission to apply the same EPFD limits applicable to NGSO FSS downlinks and inter-satellite links in the 17 GHz band.[157] Viasat also encouraged the Commission to take action on the 17 GHz band "so long as that action is consistent with the extension by WRC-23 of existing Article 22 EPFD limits to the 17 GHz band."[158] Kuiper provided technical support to demonstrate the effectiveness of EPFD(is) limits, showing that NGSO FSS operations operating even at the EPFD(is) limit would still be well below the coordination thresholds for DBS feeder links.[159] Kuiper also notes that EPFD(is) limits are based on the received power level at the point of the affected system receiver, making these limits agnostic to specific design and operational parameters, and considering that EPFD(is) limits are designed to apply to EPFD from all space stations in an NGSO FSS system, the ITU is the best body to address space-path interference concerns that may extend across geographic boundaries.[160]

40. Based on the record, we find that the ITU EPFD(is) limits applicable to the 17.8-18.3 GHz band are appropriate for operations in the adjacent 17.3-17.8 GHz band to protect incumbent operators in the bands from NGSO FSS downlink interference. We find that the EPFD(is) limits

[151] *Id*. at 22.5F.4, reading in full: "A non-geostationary-satellite system operating in Region 1 or 2, at any position in the orbit, shall meet the limits of this table for the 17.3-17.7 GHz band with respect to a receiving space station in the broadcasting-satellite feeder link of Appendix 30A, in all three Regions."

[152] *See, e.g.*, The Satellite Companies Comments at 6; The Satellite Companies Reply Comments at 6; Kuiper May 2024 Letter at 2-3; Viasat Feb. 2024 Letter at 1; DIRECTV & EchoStar Comments at 1; DIRECTV & EchoStar Reply Comments at 4.

[153] Kuiper Comments at 16; Kuiper Reply Comments at 5.

[154] Kuiper Comments at 21-22; the Satellite Companies Reply Comments at 5-6.

[155] *Id*.

[156] Kuiper May 2024 *Ex Parte* at 2.

[157] DIRECTV and EchoStar Comments at 8.

[158] Viasat Feb. 2024 Letter at 1.

[159] *See* Kuiper May 2024 *Ex Parte* at 2-3.

[160] *See id*. at 3-4.

delineated in Article 22, Table 22-3 of the Radio Regulations[161] will facilitate sharing of the 17 GHz band amongst NGSO FSS downlink operations and incumbent operations while further minimizing the potential for inter-satellite interference caused by NGSO FSS downlinks. We agree with commenters that the ITU's established EPFD(is) limits are sufficient to protect DBS space stations and BSS receive stations from potential interference, and will mitigate interference concerns of GSO FSS operators, discussed in greater detail below.[162] NGSO FSS operators are required to comply with the ITU EPFD(is) limits in both the 17.3-17.7 GHz and 17.7-17.8 GHz band as reflected in the modification to section 25.146(a)(2) of the Commission's rules adopted herein.[163]

41. *Off-axis Power Flux Density Coordination Trigger*. In the *17 GHz GSO Order*, the Commission modified sections 25.264(b)(1)-(2) of the rules and extended a PFD trigger of -117 dBW/m^2/100 kHz, applicable to BSS space station transmissions, to FSS space station transmissions in the band.[164] DIRECTV and EchoStar ask the Commission to adopt the same PFD coordination trigger as adopted in the *17 GHz GSO Order* to NGSO FSS transmissions in the 17.3-17.8 GHz band to ensure that GSO FSS and BSS operations are protected from NGSO operations, in addition to the above-discussed EPFD(is) limits.[165] Kuiper disagrees with this proposal, arguing that applying this same coordination trigger to NGSO FSS systems is redundant and not necessary to protect DBS space stations from NGSO FSS operations because the ITU Radio Regulations already require compliance with EPFD(is) limits to protect feeder links to GSO systems, and that further studies demonstrate that EPFD(is) limits are effective at protecting DBS space stations from interference.[166] Kuiper also notes that NGSO FSS stations have already been permitted to operate downlinks in Region 1 in the International Table and the space-to-space interference path does not exist between regions.[167] The Satellite Companies also disagree, arguing that a PFD coordination trigger is not needed to protect DBS feeder links from space-path interference and that their proposed solution for EPFD(is) limits renders a PFD coordination trigger superfluous.[168]

42. We conclude that the ITU EPFD(is) limits provide a more stringent standard than a PFD coordination trigger to protect DBS space stations from potential interference via NGSO FSS operations. DIRECTV and EchoStar offer no evidence of interference to GSO FSS and BSS stations or technical studies demonstrating the need for a PFD coordination trigger for NGSO FSS operations and thus we see no need to deviate from the existing EPFD(is) limits. Accordingly, we decline to adopt a PFD coordination trigger for NGSO FSS systems at this time and clarify that the ITU EPFD(is) limits adopted for the 17.3-17.7 GHz band under Article 22 of the Radio Regulations will apply to the full 17.3-17.8 GHz band and will be applicable pursuant to section 25.146(a)(2) of the Commission's rules to protect DBS space stations from potential interference.

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[161] Because the EPFD limits adopted at WRC-23 applicable to the 17.3-17.7 GHz band are identical to those previously applicable to operations within the 17.8-18.4 GHz band, for purposes of our rules we refer to the 2016 EPFD limits applicable to operations within the 17.8-18.4 GHz band as previously incorporated by reference in section 25.146(a)(2) (*see* 47 CFR § 25.108).

[162] *See infra* Section III.C.3.

[163] 47 CFR § 25.146(a)(2).

[164] *17 GHz GSO Order* at paras. 34-35.

[165] DIRECTV and EchoStar Comments at 7-8, *see 17 GHz GSO Order* at paras. 34-35.

[166] Kuiper Comments at 5.

[167] *Id*. at 5-6 ("Further, NGSO FSS space-to-Earth and GSO FSS Earth-to-space BSS feeder links have co-existed in the 17.8-18.4 GHz band for years in all three regions," and stating that, "To Amazon's knowledge, there have been no reports of harmful interference from NGSO FSS space-to-Earth operations to DBS stations in this frequency range.").

[168] The Satellite Companies Reply Comments at 6.

43. *Arc Avoidance Angle*. DIRECTV and EchoStar, jointly, and Viasat propose that the Commission should establish an effective arc avoidance angle, or an "exclusion zone," around the GSO arc from NGSO FSS transmissions.[169] Specifically, DIRECTV and EchoStar propose that the Commission require NGSO FSS satellite transmitters to maintain a minimum of 25 dB reduction from maximum equivalent isotropically radiated power (EIRP) in the direction of the GSO arc, arguing that such an exclusion zone is consistent with ITU Recommendations S. 1528.[170] Viasat proposes that NGSO FSS systems operate with a "suitable avoidance angle with respect to the GSO arc" in the 17.3-17.8 GHz band.[171]

44. Kuiper disagrees, arguing that DIRECTV and EchoStar do not specify what interference concerns this restriction would potentially address, nor do they provide a technical demonstration that such operational restrictions are necessary to prevent harmful interference.[172] Kuiper and SpaceX argue that existing solutions in the 17 GHz band and adjacent bands render this an arc avoidance angle unnecessary, specifically EPFD(is) limits and EPFD protection for BSS services, and offer technical analysis demonstrating that DBS stations and BSS operators are sufficiently protected from NGSO FSS transmissions under the EPFD(is) limits.[173] Kuiper also notes that DIRECTV and EchoStar's proposal fails to account for differences in operational parameters between NGSO systems and would result in inconsistent received power levels at the GSO arc depending on these specific parameters.[174] Further, Kuiper argues that DIRECTV and EchoStar's proposal to allow NGSO FSS applicants to obtain a certification from either the Commission or the ITU of EPFD compliance would be an inefficient use of resources because the ITU will still perform its own analysis to determine compliance and a new compliance framework would unnecessarily delay the deployment of more robust NGSO FSS operations in the 17 GHz band.[175] Either way, Kuiper finds that the ITU is the best body to address any space-path interference concerns, not the Commission.[176]

45. While arc avoidance angles can be used to address interference, they vary from system to system, and there is not enough technical evidence in the record to support adopting a specific avoidance angle or deviating from the EPFD limits at this time. As we require today, NGSO FSS operators in the 17 GHz band must comply with applicable ITU EPFD limits, which include arc avoidance angles as part of EPFD compliance.[177] Section 25.289 of the Commission's rules expressly states that if an NGSO FSS licensee is operating in compliance with applicable ITU EPFD limits, the licensee has fulfilled its obligation to not cause unacceptable interference to any GSO network.[178] NGSO FSS applicants are also required to include in each application for service the information required by section 25.146, which

[169] EchoStar Feb. 2024 Letter at 2; DIRECTV and EchoStar Reply Comments at 4-5; Viasat Comments at 3.

[170] *See* EchoStar Feb. 2024 Letter at 2.

[171] Viasat Reply Comments at 6 (proposing that "[e]ach NGSO FSS operator seeking to use the 17.3-17.8 GHz band segment should be required to coordinate a proposed GSO arc avoidance angle with affected GSO networks that accounts for (i) information about the radiofrequency design of the NGSO system, and (ii) the actual characteristics of the affected GSO networks (such as satellite receiver noise temperature and antenna gain, and the sizes and characteristics of user terminals)").

[172] *See* Kuiper May 2024 *Ex Parte* at 4.

[173] *See id*. at 2-3; *see* SpaceX Reply Comments at 11 (noting that EPFD protection for BSS services will inevitably provide interference protection to all GSO earth stations – BSS or FSS – that receive signals from satellite components in the geostationary arc).

[174] *See id*. at 3.

[175] *See* Kuiper Reply Comments at 3-4.

[176] *See id*.

[177] 47 CFR § 25.146(a)(2).

[178] 47 CFR § 25.289.

includes the ITU EPFD and PFD limits discussed herein, in the narrative of the application pursuant to section 25.114(d)(12) of our rules.[179] As discussed above, and as supported by Kuiper's ex parte, we conclude that the EPFD(is) limits provide sufficient protection for GSO FSS operators, negating the need for non-system-specific arc avoidance angles.[180] Prior to initiating service, an NGSO FSS operator licensed or holding a market access authorization to operate in the 10.7-30.0 GHz range must receive a "favorable" or "qualified favorable" finding by the ITU Radiocommunication Bureau demonstrating compliance with the applicable ITU EPFD limits, which includes EPFD(is) limits, ensuring that any NGSO FSS operator is in compliance with these international limits prior to operation.[181] We find that technical conditions adopted in this Report and Order in combination with the existing frameworks to ensure NGSO FSS operators comply with the ITU's established power limits in the 17.3-17.7 GHz and 17.7-17.8 GHz band will protect GSO FSS operations in the 17.3-17.8 GHz band without requiring compliance with a more stringent arc avoidance angle at this time.

46. We note that in particular circumstances, NGSO FSS and GSO FSS operators may jointly conclude that compliance with all applicable EPFD limits may not sufficiently protect the specific GSO FSS operations from in-line events,[182] in which case GSO and NGSO FSS operators may coordinate to implement a protective arc avoidance angle. We confirm that GSO FSS and NGSO FSS operators are permitted to enter into coordination agreements to specify a negotiated arc avoidance angle that is more protective than the angle detailed in the ITU EPFD input data files for systems operating in the 17.3-17.8 GHz band.

47. Additionally, we decline to adopt DIRECTV and EchoStar's proposal to create a process that would allow NGSO FSS operators to obtain a finding of EPFD compliance from the Commission as an alternative to an ITU finding of compliance. The Commission has previously determined that since NGSO FSS operators are required to use the ITU-approved validation software to assess compliance with EPFD limits, the Commission's review would duplicate that performed by the ITU Radio Communication Bureau.[183] We reach the same conclusion here. Further, there is no record at this time to support adopting a separate compliance framework that would function as an alternative to the ITU process and any such framework for independent Commission review is outside the scope of this proceeding.

3. Measures to Mitigate Ground Path Interference from Earth Station Operations

48. In the *17 GHz GSO Order*, the Commission adopted technical requirements and coordination procedures to protect 17.3-17.8 GHz band receiving FSS earth stations from ground path interference arising from uplink transmissions from nearby co-frequency DBS feeder link earth stations. The Commission amended section 25.203 of the rules to apply the coordination approach used to facilitate operations between DBS and 17/24 GHz BSS earth stations to FSS earth stations in the entire 17.3-17.8 GHz band, although FSS earth stations would not be entitled to protection from terrestrial fixed

[179] 47 CFR §§ 25.146, 25.114(d)(12).

[180] *See* Kuiper May 2024 *Ex Parte* at 2-3 (stating that "NGSO FSS downlinks already share spectrum with receiving DBS space stations in the 17.7-18.4 GHz band; and in the 17.3-17.7 GHz band in Region 1, and that "[i]n these real world sharing scenarios, broadcasting-satellite service ('BSS') space stations only receive protection in the 17.8-18.4 GHz band as a result of ITU EPFD(is) limits . . ., which were extended to the 17.3-17.7 GHz band in Regions 1 and 2 at WRC-23, [and these limits] are more than sufficient to protect DBS space stations from space path interference from NGSO FSS space-to-Earth links.").

[181] *See* 47 CFR § 25.146(c).

[182] An "in-line" event occurs when an NGSO satellite passes through an area between a GSO earth station and its intended GSO satellite.

[183] *See 2017 Ka-Band Order* at para. 41 (concluding that due to the complexity of EPFD demonstrations and staffing constraints, Commission review of EPFD demonstrations may take longer than the ITU review process).

service stations in the 17.7-17.8 GHz band.[184] In the *17 GHz GSO Order*, the Commission adopted rules to extend interference protection to individually-licensed FSS receiving earth stations[185] and facilitate authorization of blanket-licensed FSS earth stations and ESIMs on an unprotected basis in the 17.3-17.8 GHz band.[186]

49. *Individual and Blanket-Licensed Earth Stations and ESIMs*. The *17 GHz GSO Order* amended section 25.115(e) of the rules to facilitate individual and blanket-licensed FSS earth stations in the 17.3-17.8 GHz band, with blanket licensed earth stations operating on an unprotected basis with respect to feeder links and all receiving FSS earth stations operating on an unprotected basis with respect to the fixed service in the 17.7-17.8 GHz band.[187] The Commission also amended section 25.202 and footnote NG527A to streamline authorization of receiving ESIM earth stations on an unprotected basis in the band, finding that such receiving stations do not pose an interference threat to other services and will not place any undue coordination burden on incumbent operators if they are operating on an unprotected basis.[188]

50. Commenters in the record voiced support for taking a similar approach in this proceeding and authorizing blanket-licensed earth stations and ESIMs receiving from NGSO FSS systems in the 17 GHz band. Mangata believes that any concerns from fixed services providers about ESIMs receiving in the 17.3-17.8 GHz band are misplaced, noting that there is little difference between an ESIM and fixed FSS terminals with respect to transmission and that the PFD limits will sufficiently protect terrestrial fixed services from potential interference from NGSO transmissions, including receiving ESIMs.[189] Kuiper also supports permitting blanket-licensed earth stations and ESIMs to operate in the 17 GHz band on an unprotected basis, consistent with the approach in the *17 GHz GSO Order*.[190] Kuiper asserts that allowing NGSO ESIMs in the band will provide improved connectivity and enhanced vehicle diagnostics in areas that GSO ESIMs may not be able to reach, and that allowing both GSO and NGSO ESIMs will encourage competition and use the available spectrum more intensively.[191] SpaceX also agrees that the Commission can extend the existing technical rules adopted for GSO FSS use to apply to NGSO FSS operations, including allowing blanket licensed earth station and ESIMs operations on an unprotected basis.[192] SpaceX further notes that NGSO ESIMs can help to supplement gaps in service for maritime, airborne, and land operations, and that the Commission has already determined that allowing blanket licensing on an unprotected basis in the band will increase FSS operators' ability to use the band more efficiently for advanced satellite services without risk of interference to other services.[193]

51. The Commission concluded in the *17 GHz GSO Order* that blanket-licensed earth stations and ESIMs operating on an unprotected basis in the 17.3-17.8 GHz band pose no interference threat to other services, nor will they place any undue coordination burden on incumbent operators.[194] The Commission determined that it is in the public interest to allow these operations to increase FSS operators' flexibility to use the band more efficiently for the provisioning of advanced satellite services

[184] *17 GHz GSO Order* at para. 50; 47 CFR § 25.203(m).

[185] *17 GHz GSO Order* at para. 65.

[186] *Id*. at para. 66.

[187] *Id*. at paras. 59, 65-66; 47 CFR § 25.115(e)(2).

[188] *17 GHz GSO Order* at paras. 60, 65-66; 47 CFR §§ 2.106(d)(527)(vi), 25.202(a)(10)(i).

[189] Mangata Comments at 5.

[190] Kuiper Comments at 16-17.

[191] Kuiper Comments at 24.

[192] Space X Oct. 2023 *Ex Parte*.

[193] SpaceX Reply Comments at 9-10.

[194] *17 GHz GSO Order* at para. 65.

for the benefit of American consumers.[195] With respect to concerns about the potential for harmful interference to terrestrial fixed services, the Commission found that the risk of interference is minimal and that the technical standards adopted in the *17 GHz GSO Order* are sufficient to protect those services irrespective of whether or not blanket-licensed earth stations or ESIMs would be permitted in the band.[196]

52. We find that it is in the public interest to take the same approach in this proceeding and accordingly extend the authorization of individual and blanket-licensed earth stations in the 17.3-17.8 GHz band to include NGSO FSS earth stations. We modify section 25.115(f)(2) of the Commission's rules to permit individual or blanket licensed earth stations in the 17.3-17.8 GHz band by amending the rule to include the 17.3-17.7 GHz band and the 17.7-17.8 GHz band as authorized bands for operation of individual or blanket license applications.[197] Additionally, we clarify that blanket licensing in the 17.7-17.8 GHz band is on an unprotected basis with respect to current and future systems operating in the fixed service.[198] Section 25.202(a)(10)(iii) of the Commission's rules is also revised to add the "17.3-17.7 GHz (space-to-Earth)" and "17.7-17.8 GHz (space-to-Earth)" frequency bands to the list of frequencies available for use by ESIMs communicating with NGSO FSS space stations.[199] Accordingly, we also modify section 2.106(d)(527)(vi) (non-federal government NG527A of the U.S. Table) to reflect this allocation.[200]

C. Digital Equity and Inclusion

53. In the *17 GHz NGSO Notice*, the Commission noted its continuing efforts to advance digital equity for all,[201] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically undeserved, marginalized, or adversely affected by persistent poverty or inequality. Specifically, the Commission asked for comment on any equity-related considerations[202] and benefits associated with the proposals included in the *17 GHz NGSO Notice*,

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[195] *Id*.

[196] *Id*. at para. 66.

[197] 47 CFR § 25.115(f)(2), modified as follows: "(f) NGSO FSS earth stations in 10.7-30.0 GHz: (2) Individual or blanket license applications may be filed for operation in the 10.7-12.7 GHz, 14-14.5 GHz, 17.3-17.7 GHz, 17.7-17.8 GHz, 17.8-18.6 GHz, 18.8-19.4 GHz, 19.6-20.2 GHz, 28.35-29.1 GHz, or 29.5-30.0 GHz bands; however, ESIMs cannot operate in the 28.35-28.4 GHz band and blanket licensing in the 10.7-11.7 GHz, 17.7-17.8, 17.8-18.3 GHz, 19.3-19.4 GHz, and 19.6-19.7 GHz bands is on an unprotected basis with respect to current and future systems operating in the fixed service."

[198] *Id*.

[199] 47 CFR § 25.202(a)(10)(iii), modified as follows: "The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with NGSO FSS space stations, subject to the provisions in § 2.106 of this chapter: 10.7-11.7 GHz (space-to-Earth); 11.7-12.2 GHz (space-to-Earth); 14.0-14.5 GHz (Earth-to-space); 17.3-17.7 GHz (space-to-Earth); 17.7-17.8 GHz (space-to-Earth); 17.8-18.3 GHz (space-to-Earth); 18.3-18.6 GHz (space-to-Earth); 18.8-19.3 GHz (space-to-Earth); 19.3-19.4 GHz (space-to-Earth); 19.6-19.7 GHz (space-to-Earth); 19.7-20.2 GHz (space-to-Earth); 28.4-28.6 GHz (space-to-Earth); 28.6-29.1 GHz (Earth-to-space); 29.5-30.0 GHz (Earth-to-space)."

[200] 47 CFR § 2.106(d)(527)(vi).

[201] Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[202] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons

(continued….)

and how such proposals may promote or inhibit advances in diversity, equity, and inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.[203]

54. Several parties commented on how digital equity and inclusion can be advanced with the proposals included in the *17 GHz NGSO Notice*.[204] Kuiper asserts that allocating the 17.3-17.8 GHz band to NGSO FSS systems will increase the availability and quality of satellite broadband services, as NGSO FSS systems are well positioned to reach consumers in rural or impoverished areas and can help to mitigate disproportionate impacts of inadequate connectivity in these areas.[205] Additionally, Kuiper notes that opening the band to NGSO FSS will help to bridge the digital divide by allowing for a greater variety of service providers offering more cost-effective broadband offerings to consumers and businesses, thereby creating more accessible and affordable service options and increasing competition for consumers in remote or rural regions.[206] SpaceX asserts that opening the 17 GHz band for NGSO FSS use presents an opportunity to provide critical broadband connectivity to consumers and businesses in all areas of the country with high-capacity, low latency broadband services.[207] The Satellite Companies also note that permitting an NGSO FSS allocation in the 17 GHz band will allow for more efficient and intensive use of the band, in turn allowing consumers greater access to reliable satellite-enabled services in even the most remote locations, and will help to meet the growing demands for spectrum resources for advanced, next-generation satellite services.[208] Mangata agrees, asserting that the additional downlink capacity will further the Commission's goals of delivering high-speed broadband to unserved and underserved consumers, businesses, schools, and healthcare facilities.[209]

55. We agree with commenters' positions that permitting NGSO FSS downlink operations in the 17 GHz band will provide increased availability of satellite services, resulting in greater and more reliable broadband services to consumers in rural and underserved areas and to all Americans. We also agree that our efforts to increase connectivity to historically underserved communities are in line with our mandate under the Communications Act and our efforts to comply with Executive Order 13985. With these critical considerations in mind, the actions we take today to authorize NGSO FSS services in the 17 GHz band are aimed at increasing accessibility, supporting technological innovation and competition, and furthering the Commission's goal of increasing connectivity for all consumers.

IV. PROCEDURAL MATTERS

56. *Regulatory Flexibility Act*. The Regulatory Flexibility act of 1980, as amended (RFA), 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 impact on a substantial number of small entities."[210] Accordingly, the Commission has 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.

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otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

[203] *17 GHz NGSO Notice* at para. 79.

[204] *See*, *e.g.,* Kuiper Comments at 11-12; The Satellite Companies Comments at 3; The Satellite Companies Reply Comments at 2-3; Mangata Comments at 2.

[205] Kuiper Comments at 10-11.

[206] Kuiper Comments at 5, 12-13; Kuiper Reply Comments at 6-7.

[207] SpaceX Comments at 2-3.

[208] The Satellite Companies Comments at 3; The Satellite Companies Reply Comments at 3.

[209] Mangata Comments at 1.

[210] *See* 5 U.S.C. §§ 601-612.

57. *Paperwork Reduction Act Analysis*. The Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burdens for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of our adoption of rules implementing the Part 25 licensing and operating provisions and technical requirements. We find that such requirements are unlikely to directly impact businesses with fewer than 25 employees.

58. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. § 801(a)(1)(A).

59. *Further Information*. For additional information on this proceeding, contact Carolyn Mahoney, Satellite Programs and Policy Division, Space Bureau, at carolyn.mahoney@fcc.gov or (202) 418-7168.

V. ORDERING CLAUSES

60. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this Report and Order IS HEREBY ADOPTED.

61. **IT IS FURTHER ORDERED** that this Report and Order, including the rules set forth at Appendix A, SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

62. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

63. **IT IS FURTHER ORDERED** that the Commission's Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed herein, the Federal Communications Commission amends 47 CFR Parts 2 and 25, as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend section 2.106 by revising paragraphs (d)(58)(i) and (iv) and paragraphs (d)(527)(i) and (vi):

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

(d) * * *

* * * * *

(58) * * *

(i) The use of the band 17.3-17.8 GHz by the broadcasting-satellite service is limited to geostationary satellites.

(ii) * * *

(iii) * * * * *

(iv) In the band 17.7-17.8 GHz, earth stations in the fixed-satellite service may be authorized for the reception of FSS emissions from geostationary satellites and non-geostationary satellites, subject to the condition that these earth stations shall not claim protection from transmissions of non-Federal stations in the fixed-service that operate in the band.

* * * * *

(527) * * *

(i) * * *

(v) * * * * *

(vi) In the band 17.3-17.8 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary satellites and non-geostationary satellites on an unprotected basis.

* * * * *

PART 25 – SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721 unless otherwise noted.

* * * * *

4. Amend 25.115 by revising paragraph (f)(2) to read as follows:

§ 25.115 Applications for earth station authorizations.
* * * * *

(f) NGSO FSS earth stations in 10.7-30.0 GHz.

(1) * * *

(2) Individual or blanket license applications may be filed for operation in the 10.7-12.7 GHz, 14-14.5 GHz, 17.3-17.7 GHz, 17.7-17.8 GHz, 17.8-18.6 GHz, 18.8-19.4 GHz, 19.6-20.2 GHz, 28.35-29.1 GHz, or 29.5-30.0 GHz bands; however, ESIMs cannot operate in the 28.35-28.4 GHz band and blanket licensing in the 10.7-11.7 GHz, 17.7-17.8 GHz, 17.8-18.3 GHz, 19.3-19.4 GHz, and 19.6-19.7 GHz bands is on an unprotected basis with respect to current and future systems operating in the fixed service.

* * * * *

5. Amend 25.124 by revising paragraph (a)(6) to read as follows:

§ 25.124 Unified space station and earth station authorization.

(a) * * *

(6) NGSO FSS: 10.7-12.7 GHz, 14.4-14.5 GHz, 17.3-17.8 GHz, 17.8-18.6 GHz, 18.8-19.4 GHz, 19.6-20.2 GHz, 28.35-29.1 GHz, 29.5-30.0 GHz, 40-42 GHz, and 48.2-50.2 GHz;

* * * * *

6. Amend 25.146 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 25.146 Licensing and operating provisions for NGSO FSS space stations.

(a) * * *

(1) Any applicable power flux-density levels in Article 21, Section V, Table 21-4 of the ITU Radio Regulations (incorporated by reference, § 25.108), except: (i) in the 19.3-19.4 GHz and 19.6-19.7 GHz bands, applicants must certify that they will comply with the ITU power flux-density limits governing NGSO FSS systems in the 17.7-19.3 GHz band; and (ii) in the 17.3-17.7 GHz band, applicants must certify that they will comply with the ITU power flux-density limits governing NGSO FSS systems in the 17.7-17.8 GHz band; and

(2) Any applicable equivalent power flux-density levels in Article 22, Section II, and Resolution 76 of the ITU Radio Regulations (both incorporated by reference, § 25.108), except that for operations in the 17.3-17.8 GHz band, applicants must certify that they will comply with the ITU equivalent power flux-density limits applicable to NGSO FSS system operations in the 17.8-18.4 GHz band.

* * * * *

7. Amend 25.202 by revising paragraphs (a)(1)(iii) and (a)(10)(iii) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(1) * * *

(i) * * *

(iii) The U.S. non-Federal Table of Frequency Allocations, in 2.106 of this chapter, is applicable between Commission space station licensees relying on a U.S. ITU filing and transmitting to or receiving from anywhere on Earth, including airborne earth stations, in the 17.3-20.2 GHz or 27.5-30.0 GHz bands.

(10)

(i) * * *

(iii) The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with NGSO FSS space stations, subject to the provisions in 2.106 of this chapter:

10.7-11.7 GHz (space-to-Earth)
11.7-12.2 GHz (space-to-Earth)
14.0-14.5 GHz (Earth-to-space)
17.3-17.7 GHz (space-to-Earth)
17.7-17.8 GHz (space-to-Earth)
17.8-18.3 GHz (space-to-Earth)
18.3-18.6 GHz (space-to-Earth)
18.8-19.3 GHz (space-to-Earth)
19.3-19.4 GHz (space-to-Earth)
19.6-19.7 GHz (space-to-Earth)
19.7-20.2 GHz (space-to-Earth)
28.4-28.6 GHz (Earth-to-space)
28.6-29.1 GHz (Earth-to-space)
29.5-30.0 GHz (Earth-to-space)

* * * * *

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 (IFRA) was incorporated in *Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band*, Notice of Proposed Rulemaking (*17 GHz NGSO Notice*) released in August 2022.[2] The Commission sought written public comment on the proposals in the *17 GHz NGSO Notice*, including comment on the IFRA. No comments were received on the IFRA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. The Report and Order allocates spectrum for non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) downlink operations in the 17.3-17.7 GHz and 17.7-17.8 GHz frequency bands. More specifically, the Commission permits use of the 17.3-17.7 GHz band by NGSO FSS in the space-to-Earth (downlink) direction on a co-primary basis with incumbent services and on a shared, co-primary basis with geostationary satellite orbit (GSO) space stations. The Commission also permits NGSO FSS downlink use of the 17.7-17.8 GHz on a co-primary basis with GSO FSS downlink operations and permit authorization of receiving FSS receiving earth stations and on a shared basis with respect to GSO FSS downlink operations. In addition, the Report and Order adopts technical standards to prevent harmful interference from NGSO satellites to incumbent service operations, geostationary satellite orbit operations, and terrestrial fixed services operating in the 17 GHz band. The Commission finds that NGSO in the FSS can share the 17 GHz band in an efficient and effective manner with GSO FSS and incumbent terrestrial fixed service without causing harmful interference. The rules adopted in the Report and Order will continue to facilitate the deployment of NGSO FSS systems capable of providing advanced satellite communication services across the nation, promote growth and innovation within the domestic and global space economy, and promote competition among NGSO FSS system operators in the provision of satellite communications services to consumers, as well as continue to advance the Commission's goal of furthering the efficient use of spectrum.

B. Summary of Significant Issues Raised by Public Comments in Response to the IFRA

3. There were no comments filed that specifically addressed the rules and policies in the IFRA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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[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, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band*, Notice of Proposed Rulemaking, IB Docket No. 22-273, FCC 22-63, Appx. C (2022).

[3] 5 U.S.C. § 604

[4] 5 U.S.C. § 604(a)(3).

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

6. ***Satellite Telecommunications.*** The 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."[8] Satellite telecommunications service providers include satellite and earth station operations. The SBA small business size standard for this industry classifies a business with $44 million or less in annual receipts as small.[9] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[10] Of this number, 242 firms had revenue of less than $25 million.[11] 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.[12] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employes.[13] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

7. ***All Other Telecommunications.*** This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[14] This industry also includes establishments primarily engaged in

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[5] *Id*.

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[8] *See* U.S. Census Bureau, 2022 NAICS Definition, "517410 Satellite Telecommunications," https://www.census.gov/naics/?input=517410&year=2022&details=517410.

[9] *See* 13 CFR § 121.201, NAICS Code 517410.

[10] *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. At this time, the 2022 Economic Census data is not available.

[11] *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.

[12] 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.

[13] *Id*.

[14] *See* U.S. Census Bureau, 2022 NAICS Definition, "*517810 All Other Telecommunications*," https://www.census.gov/naics/?input=517810&year=2022&details=517810.

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.[15] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[16] Establishment in this industry do not operate as telecommunications carriers.[17] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[18] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[19] Of those firms, 1,039 had revenue of less than $25 million.[20] 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

8. The Report and Order adopts several rule changes that would affect compliance requirements for entities operating NGSO FSS systems in the 17 GHz band. For example, the Report and Order adopts rules for operations by NGSO FSS operators in the 17.3-17.8 GHz band, including revisions to some existing technical requirements that will now apply to these FSS operations. With regard to compliance costs that could result from requirements adopted in this proceeding, the record does not include the requisite cost analysis or information that would allow the Commission to quantify the costs of compliance for any impacted small entities, including whether it will be necessary for small entities to hire professionals to comply with the adopted rules. In total, the actions in the Report and Order are designed to achieve the Commission's mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

9. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected"[21]

10. In the Report and Order, the Commission considered whether and how to apply various technical rules to enable NGSO FSS operations to share the 17.3-17.8 GHz band with other services in an efficient and effective manner while protecting other authorized users of the band from harmful interference. This includes consideration, for example, of power levels and other technical considerations, and what information the Commission may need to assess compliance with technical requirements, taking into consideration potential impact on the applicant or operator. As one example, the Commission declines to require submission of additional technical information prior to satellite

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[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[19] *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.

[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.

[21] 5 U.S.C. § 604(a)(6).

operation, instead requiring that NGSO FSS applicants submit information that operators will have already prepared and submitted to international bodies for review and certification. The Commission also declined to impose reporting requirements that would require operators to gather or produce any new other data specific to the rules adopted in the Report and Order.

11. With regard to EPFD limits applicable to the 17.8-18.4 GHz band, the Commission considered and extended the EPFD limits applicable to the 17.8-18.4 GHz band to the adjacent 17.3-17.7 GHz band, and similarly extended these EPFD limits to the 17.7-17.8 GHz band. We agreed with commenters that the existing EPFD limits are sufficient to protect DBS space stations and BSS receive stations from potential interference, and are sufficient to address concerns raised by GSO FSS operators that proposed an exclusion zone angle. Therefore, the Commission declined to adopt additional requirements which could increase the economic impact and burden of compliance with the Report and Order. The Commission also declined to require additional technical showings regarding arc avoidance angle compliance in applications for NGSO licenses which would add an additional component to the application requirements and could increase the burden of compliance. Similarly regarding coordination, consistent with our agreement with commenters that the Commission has sufficient frameworks in place for sharing and coordination between NGSO and GSO operators, we declined to modify these existing frameworks to add an additional compliance approval process in this proceeding. Overall, the Commission's actions not to impose certain new and/or additional reporting and other requirements will help minimize the economic impact and reduce the compliance burdens for small and other affected licensees

G. Report to Congress:

12. 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.[22] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[23]

[22] 5 U.S.C. § 801(a)(1)(A).

[23] *Id*.

APPENDIX C

List of Commenters

Comments

AT&T Services, Inc. and Verizon ("AT&T and Verizon")
DIRECTV Enterprises, LLC and Hughes Network Systems, LLC ("DIRECTV and EchoStar")
Kuiper Systems LLC ("Kuiper")
Mangata Networks
The Satellite Companies (consisting of O3b Limited and SES Americom, Inc., Telesat Canada, and WorldVu Satellites Ltd.)
Space Exploration Holdings, LLC ("SpaceX")
Viasat, Inc. ("Viasat")

Reply Comments

AT&T and Verizon
DIRECTV and EchoStar
Kuiper
The Satellite Companies
SpaceX
Viasat

***Ex Parte* Filings**

DIRECTV and EchoStar Corporation
Kuiper
SpaceX
Viasat
AT&T and Verizon

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: ***Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band*, IB Docket No. 22-273, Report and Order (September 26, 2024)**

This past weekend I spoke at the Summit of the Future at the United Nations. I can report back that the future looks bold. Technology is transforming our world and the Global Digital Compact adopted at the summit is a testament to the power of this change. It is a comprehensive framework for multilateral digital cooperation, and it is an ambitious plan. So when I took to the stage I spoke about something equally ambitious—our efforts to support the growing space economy and open opportunities for communications in our skies.

Last year, with the support of my colleagues, I reorganized the Federal Communications Commission to have its first-ever Space Bureau. For more than six decades, the agency has worked on communications and commercial satellites. But what we are seeing now is new—the frequency of launch is increasing, the number of proposed constellations is growing, and the range of communications needed for non-terrestrial systems is expanding. So we reimagined the agency to support this development and build this future.

Since the Space Bureau launched, we have streamlined the satellite and earth station application process. We have updated our approach to orbital debris so that in the new space economy we are good stewards of our skies. We have adopted a new approach to spectrum sharing among non-geostationary fixed satellite service systems that promotes efficiency, competition, and innovation. We have created a first-of-its-kind in the world framework for satellite operators to partner with wireless carriers to use terrestrial spectrum to connect smartphones to satellites when there is no signal on the ground. This supplemental coverage from space is what I spoke about at the Summit of the Future because it represents our thinking about the networks of the future—where services combine to make communications more resilient and mobile dead zones are a thing of the past. On top of this, we have identified new airwaves to support the growing number of commercial space launches.

That brings me to our next big step toward the future of space. It's what we do here today. We open up 1300 megahertz of spectrum in the 17 GHz band for shared use by satellite systems in geostationary and non-geostationary orbits. This large, contiguous block of spectrum will support advanced services, including high-speed broadband access. Our rules allow a range of use cases from different orbits, bolstering competition in the space economy and creating more opportunities for companies from the United States around the world.

This decision would not be possible without the work of the Space Bureau and Office of International Affairs at last year's World Radiocommunication Conference in Dubai. They fought for the allocation of this band despite pressure from China, Russia, and Iran to block our plans for this spectrum. So I want to thank our formidable team, as well as the staff responsible for this order, including Clay DeCell, Carlos Flores, Whitney Lohmeyer, Scott Mackoul, Carolyn Mahoney, Kathryn Medley, Jeanine Poltronieri, Julia Tu, Merissa Velez, and Patrick Webre from the Space Bureau; Nese Guendelsberger from the Office of International Affairs; Chana Wilkerson from the Office of Communications Business Opportunities; Brian Butler, Jamie Coleman, Ira Keltz, Nick Oros, and Juan Montenegro from the Office of Engineering and Technology; Donald Stockdale and Aleks Yankelevich from the Office of Economics and Analytics; Susan Aaron, David Konczal, Joel Rabinovitz, and Royce Sherlock from the Office of the General Counsel; and Jessica Greffenius, Kimia Nikseresht, John Schauble, Blaise Scinto, and Janet Young from the Wireless Telecommunications Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: ***Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band,*** **IB Docket No. 22-273, Report and Order (September 26, 2024)**

As I've said before, we are in a golden era of commercial space. New satellite broadband systems are providing more choice and better performance for many Americans, including those who live, work, and travel in some the toughest-to-serve places. In order to sustain competition and innovation in satellite broadband, we need to provide the spectrum that this rapidly advancing industry needs to thrive. Today's Report and Order does just that. By making available a contiguous 1300 megahertz of spectrum for non-geostationary satellite orbit operations, we're supporting advances that will boost connectivity and spectral efficiency. I thank the Commission staff for their work on this item and approve.

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

In the Matter of	)	
	)	File No.: EB-FIELDSCR-22-00034439
Masner Beauplan	)	NAL/Acct. No.: 202432010011
Middletown, New York	)	FRN: 0035993252
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $920,000 against Masner Beauplan (Beauplan) for operating an unauthorized radio station, known as "Radio Leve Kanpe", on 91.7 MHz (Station) in Irvington, New Jersey and Maplewood, New Jersey, by which Beauplan apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on weekdays and Saturdays from November 16, 2023, through January 8, 2024, resulting in 46 days of apparent violations. 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 events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[2] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[3] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[3] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

inflation adjustments.[4] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[5] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[6] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[7]

B. Factual Background

3. On August 30, 2023, field agents (Agents) from the FCC's New York Field Office monitored the frequency 91.7 MHz in the vicinity of Vauxhall, New Jersey, and, using direction-finding techniques, traced the source of the signal to a residence located at {[ ]} Vermont Street, Maplewood, New Jersey (Vermont Street Site).[8] The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[9] The Agents listened to and recorded the audio programming on 91.7 MHz.[10] The Agents also took pictures of an FM broadcast dipole antenna mounted to the chimney at the Vermont Street Site.[11] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Vermont Street Site on any frequency.

4. On September 7, 2023, Agents conducted an inspection of the Station operating on 91.7 MHz located at the Vermont Street Site. The agents arrived onsite around 12:30 p.m. and found the Station was not broadcasting, although they observed the same chimney-mounted antenna as was seen on August 30, 2023.[12] The Agents conducted an inspection escorted by a person identifying themself as the property owner (Owner). The Agents observed an FM transmitter located in a shed at the Vermont Street Site.[13] The Owner identified the Station operator as Masner Beauplan and claimed Beauplan was currently renting office space from the Owner at a different address in Maplewood, New Jersey. To substantiate this claim, the Owner provided the Agents with a copy of a lease agreement that commenced on January 1, 2023, and ended on December 31, 2023, for the Maplewood office space. The lessee was identified as Radio Leve Kanpe, LLC, with Beauplan signing the lease as the company's president. The

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[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and of 47 U.S.C. § 511(b) at $119,555); *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, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[5] 47 U.S.C. § 511(h).

[6] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[7] *Id.* § 15.203.

[8] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[9] 47 CFR § 15.239(b).

[10] *See* August 30, 2023 Audio of broadcast from Vermont Street Site (on file in EB-FIELDNER-22-00034439).

[11] *See* August 30, 2023 Photographs showing dipole antenna at Vermont Street Site (on file in EB-FIELDNER-22-00034439).

[12] *See* September 7, 2023 Photographs showing dipole antenna at Vermont Street Site (on file in EB-FIELDNER-22-00034439).

[13] *See* September 7, 2023 Photographs showing inspection of Vermont Street Site (on file in EB-FIELDNER-22-00034439).

lease expressly stated: "Use: The Premises are to be used and occupied only and for no other purpose than Office Space for purposes of Radio Station."[14]

5. On November 16, 2023, Agents from the New York Office monitored the frequency 91.7 MHz in the vicinity of Maplewood, New Jersey, and, using direction-finding techniques, traced the source of the signal to a multi-family residence located at {[ ]} Tiffany Place in Irvington, New Jersey (Tiffany Place Site).[15] The Agents took field strength measurements of the signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[16] The Agents also took pictures of a roof-mounted FM broadcast dipole antenna (and coaxial cable leading from the antenna into the residence) at the Tiffany Place Site that very closely resembled the antenna that was first observed at the Vermont Street Site on August 30, 2023, and again on September 7, 2023.[17] The Agents listened to and recorded the audio programming on 91.7 MHz.[18] The Station was identified at multiple points in the recording as "Radio Leve Kanpe 91.7 New Jersey." A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Tiffany Place Site on any frequency.

6. On January 8, 2024, Agents again monitored the frequency 91.7 MHz in Irvington, New Jersey, and, using direction-finding techniques, traced the source of the signal to the Tiffany Place Site. The Agents took field strength measurements of the signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[19] The Agents also took pictures of the same roof-mounted FM broadcast dipole antenna and coaxial cable that had been observed at the Tiffany Place Site on November 16, 2023.[20] The Agents listened to and recorded the audio programming on 91.7 MHz.[21] The Station was identified at multiple points in the recording as "Radio Leve Kanpe 91.7 New Jersey." In the same recording, the Station's studio telephone number was announced as 908-834-78{[ ]}, and the host identified Masner Beauplan as president and general manager of the Station. Masner Beauplan is listed in wireless carrier records as the subscriber (i.e., the person to whom the number is assigned) of the Station's studio number 908-834-78{[ ]} as announced in the audio recordings of Station broadcasting.

7. While searching for websites and social media related to Radio Leve Kanpe, Agents found Facebook accounts for Masner Beauplan. One account showed an advertisement for a program

[14] Lease dated January 11, 2023, between 1653-55 Springfield Ave. LLC (lessor) and Radio Leve Kanpe, LLC (lessee) (on file in EB-FIELDNER-22-00034439). Although Beauplan signed the lease as President of Radio Leve Kanpe, LLC, it appears that no LLC by that name officially existed at the time. State of New Jersey official records indicate that an LLC named "Forum Radio Levekanpe LLC" was not formed by Beauplan until January 31, 2024 (i.e., one year after he had signed the lease). Beauplan did form another Radio Levekanpe entity prior to the lease period; however, Radio LeveKanpe, Inc. was formed in New Jersey on October 19, 2016, with Beauplan listed as its Incorporator, President, and sole Director. The corporation lost its certificate to operate in New Jersey, but that certificate was reinstated as of October 29, 2019, with Beauplan listed as the corporation's Chief Executive Officer and Registered Agent. The corporation was ultimately dissolved on August 2, 2022. *See* New Jersey Dep't of the Treasury corporate filing records (on file in EB-FIELDNER-22-00034439).

[15] Both the Vermont Street Site and Tiffany Place Site are at different locations from the Maplewood, NJ office space that was leased by Beauplan.

[16] 47 CFR § 15.239(b).

[17] *See* November 16, 2023 Photographs showing dipole antenna at Tiffany Place Site (on file in EB-FIELDNER-22-00034439).

[18] *See* November 16, 2023 Audio recording of broadcast from Tiffany Place Site (on file in EB-FIELDNER-22-00034439).

[19] 47 CFR § 15.239(b).

[20] *See* January 8, 2024 Photographs showing dipole antenna at Tiffany Place Site (on file in EB-FIELDNER-22-00034439).

[21] *See* January 8, 2024 Audio recording of broadcast from Tiffany Place Site (on file in EB-FIELDNER-22-00034439).

Beauplan hosts on the Station called "Jounal Radio Leve Kanpe," which is broadcast Monday through Friday from 8:00 a.m. to 12:00 p.m., then repeated on those same weekdays from 9:00 p.m. to midnight and also on Saturdays from midnight to 1:00 a.m.[22] The account also displayed a picture of Beauplan next to that advertisement.[23]

III. DISCUSSION

8. We find that Beauplan, in apparent violation of section 511 of the Act,[24] willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 91.7 MHz, known as "Radio Leve Kanpe" in Irvington, New Jersey and Maplewood, New Jersey.[25] Agents observed the Station operating on November 16, 2023, and January 8, 2024, from the Tiffany Place Site. Agents performed field strength measurements on each of these dates, and determined that in each case the Station's transmissions exceeded the limits for operation under part 15 of the Commission's rules.[26] In addition, evidence shows Radio Leve Kanpe was responsible for advertisements that promoted programming occurring on Monday through Saturday during the subject period between November 16, 2023, and January 8, 2024. Further, Agents determined that the antenna used to broadcast Radio Leve Kanpe from the Tiffany Place Site on November 16, 2023, and January 8, 2024, were not compliant with the part 15 requirements because, instead of using a unique coupling, it used a standard coaxial connector.[27] Therefore, the transmissions from the Tiffany Place Site on weekdays and Saturdays between November 16, 2023, and January 8, 2024, failed to comply with part 15 of the Commission's rules. A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Tiffany Place Site at any time relevant to the violations discussed in this NAL.

9. Considering the totality of the circumstances and facts before us, including multiple violations documented on three different weekdays, the numerous additional advertised violations on weekdays and Saturdays between November 16, 2023, and January 8, 2024, the non-compliant antenna used to broadcast the Radio Leve Kanpe signal from two different locations with impermissibly high power levels,[28] and the evidence that Beauplan owned and operated Radio Leve Kanpe, we find that Beauplan operated a pirate radio station and apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on weekdays and Saturdays from November 16, 2023, to January 8, 2024, for a minimum of 46 days of apparent violations. Accordingly, the Commission finds that Beauplan's actions on these days constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[29]

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[22] *See* Facebook, Masner Beauplan, https:/facebook.com/masnerb (last visited May 31, 2024) (on file in EB-FIELDNER-22-00034439).

[23] The photograph accompanying the Jounal Radio Leve Kanpe advertisement was identified as Beauplan's because it is not only captioned as such, but also matches photographs on another Facebook site belonging to Beauplan. *See, e.g.*, Facebook, Masner Beauplan, https:/facebook.com/masnerb (last visited May 31, 2024) (on file in EB-FIELDNER-22-00034439).

[24] 47 U.S.C. § 511.

[25] Although the Station's broadcasting activity observed on August 30, 2023, *see supra* para. 3, constitutes illegal pirate radio broadcasting, it falls outside the one-year statutory limitations period. *See* 47 U.S.C. § 503(b)(6)(B).

[26] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[27] *See* 47 CFR § 15.203.

[28] *Id.*

[29] 47 U.S.C. § 511(a), (h).

A. Proposed Forfeiture

10. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[30] In exercising our forfeiture authority, we 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."[31] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[32]

11. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[33] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[34]

12. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[35] Accordingly, in 2023 the Commission established a base forfeiture of $20,000 for pirate radio broadcasting,[36] which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the 46 days that Beauplan apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of $920,000.[37]

13. In applying the applicable statutory factors, we consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,[38] Masner Beauplan is apparently liable for a proposed total monetary forfeiture of $920,000.[39]

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[30] *Id.* § 511(a).

[31] 47 CFR § 1.80(b)(11).

[32] *Id*.

[33] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[34] 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *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, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[35] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[36] The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. *See, e.g.*, *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2562, 2569, para. 15 (2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2554 2569, para. 15 (2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

[37] *See* 47 U.S.C. § 511.

[38] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[39] 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.

IV. CONCLUSION

14. We have determined that Masner Beauplan apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act. As such, Masner Beauplan is apparently liable for a forfeiture of $920,000.

V. ORDERING CLAUSES

15. 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, Masner Beauplan is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nine hundred, twenty thousand dollars ($920,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

16. **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, Masner Beauplan **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 19.

17. In order for Masner Beauplan to pay the proposed forfeiture, he 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. Upon payment, Beauplan 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. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.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:[40]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[41] or printed CORES form[42] 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).[43] 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/user Login.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

[40] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

[42] 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.

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

the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

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

18. 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, N.E., Washington, D.C. 20554.[44] 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.

19. 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.[45] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

20. 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.[46] 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.[47]

[44] *See* 47 CFR § 1.1914.

[45] *Id.* §§ 1.16, 1.80(g)(3).

[46] 47 U.S.C. § 503(b)(2)(E).

[47] *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).

21. **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 Masner Beauplan at {[ ]} Neptune Lane, Middletown, New York 10940.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Masner Beauplan, Middletown, New York,* Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDSCR-22-00034439 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-FIELDNER-23-00034868
Raul Alcantara	)	NAL/Acct. No.: 202432010012
Bronx, New York	)	FRN: 0035993328
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $40,000 against Raul Alcantara (Alcantara) for operating an unauthorized radio station, known as "Sabor FM", on 88.9 MHz (Station) in the Bronx, New York, on November 1, 2023, and January 9, 2024, by which Alcantara apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting, resulting in two apparent violations. 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 events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[2] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[3] Both of these figures are subject to annual inflation adjustments.[4] Section 511 defines pirate radio broadcasting as "the transmission of

[1] 47 U.S.C. § 511.

[2] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[3] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and of 47 U.S.C. § 511(b) at $119,555); *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, at *7

(continued….)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[5] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[6] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[7]

B. Factual Background

3. On November 1, 2023, field agents (Agents) from the FCC's New York Office, in response to a complaint, monitored the frequency 88.9 MHz in the Bronx, New York, and, using direction-finding techniques, traced the source of the signal to a building located at {[ ]} W. Kingsbridge Road, Bronx, New York (Kingsbridge Site).[8] The Agents listened to and recorded the Station identified over the air as "Sabor 88.9 FM."[9] The Agents also observed and photographed an FM broadcast antenna on the roof of the Kingsbridge Site and determined that the antenna was a type that utilized a standard coaxial connector and was therefore not compliant with part 15 of the Commission's rules.[10] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Kingsbridge Site on any frequency.

4. On January 9, 2024, Agents again monitored the frequency 88.9 MHz in the Bronx, New York, and, using direction-finding techniques, confirmed that the source of the signal on 88.9 MHz continued to originate from the Kingsbridge Site. Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under the part 15 rules.[11] Agents also determined that the over-the-air programming on 88.9 MHz was an exact match for the audio on the Sabor FM's TuneIn internet stream.[12]

(Continued from previous page)
(EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[5] 47 U.S.C. § 511(h).

[6] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter ("µV/m") at 3 meters).

[7] *Id.* § 15.203.

[8] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[9] *See* November 1, 2023 Audio and video recordings of the broadcast from the Kingsbridge Site (on file in EB-FIELDNER-23-00034868). Specifically, a video taken on November 1, 2023, includes audio of the Station's over-the-air broadcast that identifies the frequency of the Station in Spanish as "*ochenta y ocho punto nueve*" which translates to "eighty-eight point nine."

[10] *See* 47 CFR § 15.203; *see also* November 1, 2023 Photographs of antenna located at the Kingsbridge Site (on file in EB-FIELDNER-23-00034868).

[11] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("µV/m") at three meters. *See* 47 CFR § 15.239(b). Measurements showed that the field strength of the Station's signal exceeded the permissible level for a non-licensed part 15 transmitter. *See* January 9, 2024 Field Strength Measurements (on file in EB-FIELDNER-23-00034868).

[12] *See* January 9, 2024 Video comparison of the Station's over-the-air transmission and internet stream from Sabor FM's website, https://saborfm.net (on file in EB-FIELDNER-23-00034868).

5. During the course of the investigation, Agents conducted social media and news media research for Sabor FM 88.9 and found information identifying Raul Alcantara as the Station's director.[13] A YouTube video, whose title names Alcantara as director of the Station, shows pictures of Alcantara holding a plaque with his name along with the Station's identification, frequency, website, and Bronx, New York location.[14] Raul Alcantara's Facebook page contains a banner displaying "Sabor FM 88.9,"[15] along with numerous videos showing Alcantara identifying Sabor FM and broadcasting from a studio with the Station's banner in the background.[16] The Station's website identifies (718) 766-90{[[redacted]]} as one of the contact numbers for the Station.[17] Raul Alcantara is listed in telephone records as the subscriber (i.e., the person to whom the number is assigned) for that same phone number.

III. DISCUSSION

6. We find that Alcantara, in apparent violation of section 511 of the Act,[18] willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station, known as "Sabor FM", on 88.9 MHz on November 1, 2023, and January 9, 2024. On November 1, 2023, Agents determined that the antenna used to broadcast "Sabor FM" radio from the Kingsbridge Site on that day was not compliant with the part 15 requirements because, instead of using a unique coupling, it is a type that uses a standard connector.[19] On January 9, 2024, Agents performed field strength measurements and determined that the transmissions on 88.9 MHz exceeded the limits for operation under part 15 of the Commission's rules.[20] A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Kingsbridge Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Alcantara is the operator of the Station.[21] Accordingly, the Commission finds that Alcantara's actions on November 1, 2023, and January 9, 2024, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[22]

A. Proposed Forfeiture

7. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio

[13] *See, e.g.*, https://www.elgloboindependiente.com/2022/12/ny-radio-emisora-sabor-fm-889-celebra.html (last visited Apr. 15, 2024) (describing Sabor FM's sixth anniversary and identifying Raul Alcantara as the Station's manager); *NY: Radio emisora Sabor FM 88.9 celebra su 6to aniversario*, El Globo Independiente (Dec. 3, 2022) (describing Sabor FM's sixth anniversary and identifying Raul Alcantara as the Station's manager); *Sabor FM 88.9 celebra su 4to Aniversario*, LosMina.net (Dec. 1, 2020) (describing Sabor FM's fourth anniversary and identifying Raul Alcantara as the Station's director); https://losmina.org/2020/12/01/sabor-fm-88-9-celebra-su-4to-aniversario/ (last visited Apr. 15, 2024) (describing Sabor FM's fourth anniversary and identifying Raul Alcantara as the Station's director).

[14] *Felicitan a Sabor FM y su director Raúl Alcántara*, YouTube (Dec. 1, 2019), https://www.youtube.com/watch?v=4HOHjxHqZJQ (last visited Apr. 15, 2024).

[15] Raul Alcantara (raul.alcantara.10), Facebook, https://www.facebook.com/raul.alcantara.10 (last visited Apr. 8, 2024).

[16] *See* Videos, Raul Alcantara (raul.alcantara.10), Facebook, https://www.facebook.com/raul.alcantara.10/videos (last visited Apr. 8, 2024).

[17] *See* Sabor FM, https://saborfm.net (last visited Apr. 8, 2024).

[18] 47 U.S.C. § 511.

[19] *See* 47 CFR § 15.203.

[20] *See supra* para. 4.

[21] *See supra* para. 5.

[22] 47 U.S.C. § 511(a), (h).

broadcasting."[23] In exercising our forfeiture authority, we 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."[24] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[25]

8. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[26] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[27]

9. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[28] Accordingly, in 2023, the Commission established a base forfeiture of $20,000 for pirate radio broadcasting,[29] which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the two instances that Alcantara apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of $40,000.[30]

10. In applying the applicable statutory factors, we consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,[31] Alcantara is apparently liable for a proposed total monetary forfeiture of $40,000.[32]

IV. CONCLUSION

11. We have determined that Raul Alcantara apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on November 1, 2023, and January 9, 2024. As such, Alcantara is apparently liable for a forfeiture of $40,000.

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[23] *Id.* § 511(a).

[24] 47 CFR § 1.80(b)(11).

[25] *Id*.

[26] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[27] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *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, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[28] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[29] The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture. *See, e.g.*, *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2562, 2569, para. 15 (2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2554, 2558, para. 12 (2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178 (Oct. 13, 2023).

[30] *See* 47 U.S.C. § 511.

[31] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17101, para. 27 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[32] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

V. ORDERING CLAUSES

12. 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, Raul Alcantara is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty thousand dollars ($40,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

13. **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, Raul Alcantara **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 16.

14. In order for Raul Alcantara to pay the proposed forfeiture, he 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. Upon payment, Alcantara 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. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.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:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/user Login.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.

[33] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

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

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

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

15. 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, N.E., Washington, D.C. 20554.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

17. 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.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

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[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

18. **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 Raul Alcantara at his last known address of {[[redacted]]} Sedgwick Avenue, Apt. {[[redacted]]} Bronx, New York 10453-6608.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Raul Alcantara, Bronx, New York,* Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00034868 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-FIELDNER-24-00036256
Wilner Baptiste	)	NAL/Acct. No.: 202432010013
Spring Valley, New York	)	FRN: 0035993310
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $40,000 against Wilner Baptiste (Baptiste) for operating an unauthorized radio station, known as "M-One Radio Live" or "M-One Live Radio," on 94.1 MHz (Station) in Spring Valley, New York, by which Baptiste apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on February 27 and June 12, 2024, resulting in two days of apparent violations. 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 events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

1. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[2] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[3] Both of these figures are subject to annual inflation adjustments.[4] Section 511 defines pirate radio broadcasting as "the transmission of

[1] 47 U.S.C. § 511.

[2] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[3] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and of 47 U.S.C. § 511(b) at $119,555); *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, at *7

(continued….)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[5] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[6] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[7]

B. Factual Background

2. On February 27, 2024, field agents (Agents) from the FCC's New York Field Office, acting on a complaint, monitored the frequency 94.1 MHz and, using direction-finding techniques, traced the source of the signal to {[ ]} Gerow Avenue, Spring Valley, New York (Gerow Avenue Site).[8] The Agents took field strength measurements of the station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[9] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Gerow Avenue Site on any frequency.

3. On June 12, 2024, Agents again monitored the frequency 94.1 MHz in Spring Valley, New York, and, using direction-finding techniques, traced the source of the signal to the Gerow Avenue Site. The Agents also observed and photographed an FM broadcast antenna on the roof of the Gerow Avenue Site and determined that the antenna was a type that utilized a standard coaxial connector and was therefore not compliant with part 15 of the Commission's rules.[10]

4. Agents searched public records for the address of the Gerow Avenue site and found a business certificate issued for "M-One Radio Live" with a primary business address at that location registered to a sole proprietor—Wilner Baptiste.[11] The business certificate lists the phone number for M-One Radio Live as 845-893-15{[ ]}.[12] Baptiste is listed in wireless carrier records as the subscriber (i.e., the person to whom the number is assigned) of this number. Agents also found a website for "M-One Live Radio."[13] The website tells visitors to "[t]une into M-One Live Radio 94.1 FM,"[14] identifies Wilner Baptiste as the radio host, and provides a bio and photograph of Baptiste and another

(EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[5] 47 U.S.C. § 511(h).

[6] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[7] *Id.* § 15.203.

[8] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[9] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. *See* 47 CFR § 15.239(b).

[10] *See id.* § 15.203; *see also* June 12, 2024 photographs of antenna located at the Gerow Avenue Site (on file in EB-FIELDNER-24-00036256).

[11] *See* Business Certificate issued to Wilner Baptiste (on file EB-FIELDNER-24-00036256).

[12] *Id.*

[13] M-One Live Radio, https://m-oneliveradio.com (last visited June 5, 2024).

[14] *Id.*

employee.[15] The Station's website also lists the same number on the M-One Radio Live business certificate as the contact number.[16]

III. DISCUSSION

5. We find that Baptiste, in apparent violation of section 511 of the Act,[17] willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 94.1 MHz in Spring Valley, New York, known as "M-One Radio Live" on February 27 and June 12, 2024. On both of these dates, Agents observed the Station operating at the Gerow Avenue Site on 94.1 MHz – the same frequency advertised on the Station's website.[18] On February 27, 2024, Agents performed field strength measurements and determined that the transmissions on 94.1 MHz exceeded the limits for operation under part 15 of the Commission's rules.[19] On June 12, 2024, Agents determined that the antenna used to broadcast "M-One Radio Live" radio from the Gerow Avenue Site on that day was not compliant with the part 15 requirements because, instead of using a unique coupling, it is a type that uses a standard connector.[20] A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Gerow Avenue Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Baptiste is the owner and operator of the Station.[21] Accordingly, the Commission finds that Baptiste's actions on February 27 and June 12, 2024, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[22]

A. Proposed Forfeiture

6. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[23] In exercising our forfeiture authority, we 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."[24] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[25]

7. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[26] Under these sections, any person who willfully and knowingly

[15] *See* Our Team, M-One Live Radio, https://m-oneliveradio.com/our-team (last visited June 5, 2024).

[16] *See* Contact, M-One Live Radio, https://m-oneliveradio.com/contact (last visited June 5, 2024).

[17] 47 U.S.C. § 511.

[18] *See supra* para. 5.

[19] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.").

[20] *See* 47 CFR § 15.203.

[21] *See supra* para. 5.

[22] 47 U.S.C. § 511(a), (h).

[23] *Id.* § 511(a).

[24] 47 CFR § 1.80(b)(11).

[25] *Id*.

[26] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[27]

8. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[28] Accordingly, in 2023, the Commission established a base forfeiture of $20,000 for pirate radio broadcasting,[29] which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the two days that Baptiste apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of $40,000.[30]

9. In applying the statutory factors, we also consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the Forfeiture Policy Statement, Baptiste is apparently liable for a proposed total monetary forfeiture of $40,000.[31]

IV. CONCULSION

10. We have determined that Wilner Baptiste apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on February 27 and June 12, 2024. As such, Baptiste is apparently liable for a forfeiture of $40,000.

V. ORDERING CLAUSES

11. 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, Wilner Baptiste, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of forty thousand dollars ($40,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

12. 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, Wilner Baptiste, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 16.

13. In order for Wilner Baptiste to pay the proposed forfeiture, he 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. Upon payment, Baptiste 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.

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[27] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *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, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[28] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[29] The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. *See, e.g.*, *César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2562, 2569, para. 15 (2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, 38 FCC Rcd 2554, 2569, para. 15 (2023).

[30] *See* 47 U.S.C. § 511.

[31] 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.

Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.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:[32]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[33] or printed CORES form[34] 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).[35] 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/user Login.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. 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, N.E., Washington, D.C. 20554.36 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.

[32] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

[34] 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.

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

[36] *See* 47 CFR § 1.1914.

15. 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.[37] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at mailto:field@fcc.gov.

16. 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. 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 CFR § 503(b)(2)(E) support that result.[38]

17. 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 Wilner Baptiste, at {[ ]} Gerow Avenue, Spring Valley, New York.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[37] *Id.* §§ 1.16, 1.80(g)(3).

[38] *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).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Wilner Baptiste, Spring Valley, New York,* Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-24-00036256 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-FIELDSCR-23-00034972
Cameron Brown	)	NAL/Acct No.: 202432020001
North Miami, Florida	)	FRN: 0034792200
	)	

FORFEITURE ORDER

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

1. We impose a penalty of $358,665 against Cameron Brown (Brown), for operating an unauthorized radio station on 89.5 MHz in Miami-Dade County, Florida. Brown has engaged in the longstanding illicit operation of an unauthorized radio station known as "The Plug." 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] Accordingly, enforcement action here is essential.

2. On January 26, 2024, the Commission issued a Notice of Apparent Liability for Forfeiture proposing a $358,665 forfeiture against Brown for willful and knowing violations of section 511 of the Act by engaging in pirate radio broadcasting on February 10, February 25, and March 4, 2023.[3] Brown has not filed a response to the *NAL*. 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*.[4]

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, Cameron Brown is **LIABLE FOR A MONETARY FORFEITURE** in the amount of three hundred fifty-eight thousand six hundred sixty-five dollars ($358,665) 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. Brown shall send electronic notification of payment to the Office of the Field Director,

[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 Cameron Brown, North Miami, Florida*, Notice of Apparent Liability for Forfeiture, FCC 24-11, 24 WL 725042 (Jan. 26, 2024) (*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] 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.

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 Cameron Brown to pay the proposed forfeiture, Cameron Brown 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:[5]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF." In addition, a completed Form 159[6] or printed CORES form[7] 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).[8] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which

[5] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

[7] 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.

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

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

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 Cameron Brown at {[[redacted]]} NW 12th Ct., Miami, Florida, 33167.[9]

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[9] Material that is set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Cameron Brown, North Miami, Florida,* Forfeiture Order, File No.: EB-FIELDSCR-23-00034972 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-FIELDSCR-23-00034973
Brindley Marshall	)	NAL/Acct No.: 202432020003
Miami, Florida	)	FRN: 0034792283
	)	

FORFEITURE ORDER

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

1. We impose a penalty of $358,665 against Brindley Marshall (Marshall), for operating an unauthorized radio station on 97.7 MHz in Miami, Florida. Marshall has engaged in the longstanding illicit operation of an unauthorized radio station known as "Hot 97.7 FM." 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] Accordingly, enforcement action here is essential.

2. On January 26, 2024, the Commission issued a Notice of Apparent Liability for Forfeiture proposing a $358,665 forfeiture against Marshall for willful and knowing violations of section 511 of the Act by engaging in pirate radio broadcasting on February 5, February 25, and March 4, 2023.[3] Marshall 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, Brindley Marshall is **LIABLE FOR A MONETARY FORFEITURE** in the amount three hundred fifty-eight thousand six hundred sixty-five dollars ($358,665) for willfully and knowingly violating section 511 of the Act.

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[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 Brindley Marshall, Miami, Florida*, Notice of Apparent Liability for Forfeiture, FCC 24-09, 2024 WL 725052 (Jan. 26, 2024) (*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 26, 2024, a copy of the *NAL* was sent to Brindley Marshall 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.

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. Marshall 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 Brindley Marshall to pay the proposed forfeiture, Brindley Marshall 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 159[7] or printed CORES form[8] 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 associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two

[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.

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 Brindley Marshall at {[[redacted]]} NW 143rd St, Opa Locka, FL 33054.[10]

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[10] Material that is set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Brindley Marshall, Miami, Florida,* Forfeiture Order, File No.: EB-FIELDSCR-23-00034973 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-FIELDSCR-22-00033786
Abdias Datis	)	NAL/Acct No.: 202432020002
Miami, FL	)	FRN: 0034792267
	)	

FORFEITURE ORDER

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Simington dissenting:

1. We impose a penalty of $120,000 against Abdias Datis a/k/a DJ AJ 305 (Datis), for operating an unauthorized radio station on 91.7 MHz in Miami, Florida. Datis has engaged in the longstanding illicit operation of an unauthorized radio station known as "Unique FM." 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]

2. On January 26, 2024, the Commission issued a Notice of Apparent Liability for Forfeiture proposing a $120,000 forfeiture against Datis for willful and knowing violations of section 511 of the Act by engaging in pirate radio broadcasting on February 5, February 25, and March 4, 2023.[3] Datis 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, Abdias Datis is **LIABLE FOR A MONETARY FORFEITURE** in the amount of one-hundred-twenty-thousand dollars ($120,000) 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

[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 Abdias Datis, Miami, Florida*, Notice of Apparent Liability for Forfeiture, FCC 24-10, 2024 WL 687848 (Jan. 26, 2024) (*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 26, 2024, a copy of the *NAL* was sent to Abdias Datis 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.

Order. Datis 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 Abdias Datis to pay the proposed forfeiture, Abdias Datis 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 159[7] or printed CORES form[8] 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 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

[6] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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[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.

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 Abdias Datis at {[ ]} NW 147th Street, Miami, Florida 33168.[10]

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[10] Material that is set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Abdias Datis, Miami, Florida,* Forfeiture Order, File No.: EB-FIELDWR-22-00033786 (September 26, 2024).

At the Federal Communications Commission, we are stewards of the public airwaves. We take this responsibility seriously. To ensure this vital resource is broadly available and free from harmful interference, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In this series of enforcement actions, we propose fines against three unauthorized radio operators in New York. We also finalize penalties against three operators based in the Miami area. Each of these actions is taken in response to the PIRATE Act, in which Congress specifically directed this agency to expand its enforcement efforts to address unauthorized radio broadcasting because it can interfere with authorized stations and emergency communications. To ensure the job gets done, Congress also provided us with a special annual appropriation to do so.

Today we get the job done thanks to Field Regional Management and Agents in our Miami and New York Field Offices who worked tirelessly on these investigations. These are public servants who serve on the front lines of our work to enforce the rules that govern the public airwaves. We are grateful for their efforts. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Reggie Breshears, Robert Keller, Robert Kincaid, Erica McMahon, Dave Dombrowski, and Dedrick Roybiskie from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	File No.: EB-TCD-24-00036094
Steve Kramer	)	NAL/Acct. No.: 202432170005
	)	FRN: 0035440791
	)	

FORFEITURE ORDER

Adopted: September 26, 2024 **Released: September 30, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioners Gomez issuing separate statements; Commissioner Simington dissenting.

I. INTRODUCTION

1. We impose a penalty of $6,000,000 against Steve Kramer (Kramer) for effectuating an illegal robocall campaign that targeted potential New Hampshire voters two days before the state's 2024 Democratic Presidential Primary Election (Primary Election) in violation of the Truth in Caller ID Act of 2009, which is codified at section 227(e) of the Communications Act of 1934, as amended (Communications Act), and section 64.1604 of our rules.[1] Kramer's illegal robocalls carried a deepfake[2] generative artificial intelligence (AI) voice message (Deepfake Message) that imitated U.S. President Joseph R. Biden, Jr.'s voice and encouraged potential voters not to vote in the then-upcoming Primary Election. The caller identification (caller ID) information was inaccurate and misleading as the calls transmitted the telephone number associated with a prominent New Hampshire political operative (NHPO); in reality, Kramer—without the knowledge or consent of the individual whose telephone number was identified in the caller ID—was responsible for the spoofed robocalls.

2. Following an extensive investigation by the Federal Communications Commission's (Commission or FCC) Enforcement Bureau (Bureau), the Commission determined that Kramer knowingly caused thousands of illegal prerecorded voice robocalls to be transmitted using misleading and inaccurate caller ID information with the intent to defraud and cause harm in violation of the Truth in Caller ID Act and the Commission's implementing regulation.

3. On May 23, 2024, the Commission adopted a Notice of Apparent Liability for Forfeiture (NAL) proposing a $6,000,000 forfeiture against Kramer for the violations of its rules.[3] Kramer did not respond to the NAL.[4] As such, we see no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the $6,000,000 forfeiture as previously proposed.

[1] 47 U.S.C. § 227(e); 47 CFR § 64.1604.

[2] "Deepfake" is defined as "an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said." *Deepfake*, Merriam-Webster (last updated Aug. 13, 2024), https://www.merriam-webster.com/dictionary/deepfake.

[3] *Steve Kramer*, Notice of Apparent Liability for Forfeiture, FCC 24-59, 2024 WL 2717624 (May 23, 2024) (NAL).

[4] The Commission sent the NAL to Kramer via electronic and certified mail. Kramer confirmed receipt of the NAL via email but did not provide a substantive response. *See* Email from Steve Kramer to Raul Rojo, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 24, 2024 at 12:31 PM) (on file in EB-TCD-24-00036094).

II. BACKGROUND

A. Legal Framework

4. Congress recognized that consumers have embraced caller ID as a vital part of voice telephone service, using it to help them decide whether to answer the phone.[5] Caller ID is only valuable, however, if it is accurate.[6] To protect consumers, Congress passed the Truth in Caller ID Act which makes it "unlawful for any person . . . to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value"[7]—a practice known as "spoofing."[8]

5. On February 8, 2024, the Commission confirmed that the Telephone Consumer Protection Act's restrictions on the making of calls using an "artificial or prerecorded voice" encompass current AI technologies that generate artificial human voices.[9] In doing so, the Commission observed that uses of voice cloning "can uniquely harm consumers and those whose voice is cloned. Voice cloning can convince a called party that a trusted person, or someone they care about such as a family member, wants or needs them to take some action that they would not otherwise take."[10] While a Truth in Caller ID violation is not dependent on the content of the call, calls transmitting AI voice-cloned messages and inaccurate or misleading caller ID may further demonstrate a caller's intent to defraud, cause harm, or wrongfully obtain something of value.

B. Factual Background

6. On January 21, 2024, two days before the New Hampshire Primary Election, thousands of potential voters received robocalls that included the following prerecorded and artificial voice Deepfake Message—all but the last sentence of which was spoken in a voice that was artificially created to sound like President Biden:[11]

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[5] *See* 156 Cong. Rec. H2522, H2523 (2010) (remarks of Rep. Stearns) ("Millions of Americans use caller ID to secure greater privacy for their families.").

[6] *Id.* at H2524 (remarks of Rep. Engel) ("Now, if you see a caller ID and you see it has a phone number, most people think that it's ironclad that that's the actual phone number that's calling them when in truth it's not."); 155 Cong. Rec. S170-02, S173 (2009) (remarks of Sen. Nelson) ("Consumers expect caller I.D. to be accurate because it helps them decide whether to answer a phone call and trust the person on the other end of the line.").

[7] 47 U.S.C. § 227(e)(1).

[8] *Caller ID Spoofing*, Fed. Commc'ns Comm'n, https://www.fcc.gov/spoofing (last updated Mar. 7, 2022) ("Spoofing is when a caller deliberately falsifies the information transmitted to your caller ID display to disguise their identity.").

[9] *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17, 2024 WL 519167, at *2 (Feb. 8, 2024) (*AI Declaratory Ruling*); *see also* 47 U.S.C. § 227(b)(1)(A)-(B).

[10] *AI Declaratory Ruling*, 2024 WL 519167, at *2, para. 6.

[11] Numerous news outlets have concluded that the recorded voice resembled the voice of President Biden. *See, e.g.*, Alex Seitz-Wald and Mike Memoli, *Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday*, NBC News (Jan. 22, 2024, Updated 11:45 AM EST), https://www.nbcnews.com/politics/2024-election/fake-joebiden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984 ("The call, an apparent imitation or digital manipulation of the president's voice . . . ."); Jacob Rosen, *Fake Biden robocall encourages voters to skip New Hampshire Democratic primary*, CBS News (Jan. 22, 2024, Updated Jan. 23, 2024 9:17 AM EST), https://www.cbsnews.com/news/fake-biden-robocall-new-hampshire-primary/ ("A fake robocall impersonating President Biden . . . "); Sasha Pezenik and Brittany Shepherd, *Fake Biden robocall urges New Hampshire voters to skip their primary*, ABC News (Jan. 22, 2024, 8:08 PM), https://abcnews.go.com/Politics/fake-biden-robocallurges-new-hampshire-voters-skip/story?id=106580926 ("A robocall appearing to impersonate the voice of President Joe Biden . . . ."); Em Steck and Andrew Kaczynski, *Fake Joe Biden robocall urges New Hampshire voters not to vote*

(continued….)

> This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push nonpartisan and Democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday. If you would like to be removed from future calls, please press two now. Call {[ ]} to be removed from future calls.[12]

7. The caller ID information, which matched the number identified in the Deepfake Message, indicated that the calls came from phone number {[ ]} (Spoofed Number), which is subscribed to by the spouse of the NHPO, a former New Hampshire Democratic Party chair and treasurer of a Political Action Committee (PAC) that led an effort to encourage New Hampshire Democrats to write-in President Biden's name in the state's Primary Election.[13] However, neither the NHPO nor their spouse were in any way involved in making the calls.[14] Indeed, the Deepfake Message was directly counter to the very purpose of the NHPO's efforts with regards to the Primary Election: the NHPO's PAC encouraged voters to write-in Biden's name in the Primary Election, whereas the Deepfake Message encouraged voters to not vote at all.[15]

8. The Bureau launched an investigation into the calls in coordination with the New Hampshire Department of Justice, Office of the Attorney General, the bipartisan Anti-Robocall Multistate Litigation Task Force (Task Force),[16] the U.S. Department of Justice, and USTelecom's Industry

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in Tuesday's Democratic primary, CNN (Jan. 22, 2024, Updated 5:44 PM EST), https://www.cnn.com/2024/01/22/politics/fake-joe-biden-robocall/index.html ("A robocall that appears to be an AI voice resembling President Joe Biden . . . .").

[12] *See* Subpoena Response of Steve Kramer (Mar. 20, 2024) (on file in EB-TCD-24-00036094) (Kramer Subpoena Response) at email from {[ ]} of Voice Broadcasting to Kramer (Jan. 21, 2024 at 2:34 PM) (attaching Deepfake Message audio file); Subpoena Response of Life Corp. (Feb. 7, 2024) (on file in EB-TCD-24-00036094) (Life Subpoena Response) at Response to Request for Information (RFI) No. 1 (confirming thousands of calls made on January 21, 2024, to recipients carrying the Deepfake Message); *see also* YouMail Threat Actor Profile for YPS-6194 (Mar. 19, 2024) (on file in EB-TCD-24-00036094). Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[13] Life Subpoena Response at Response to RFI No. 2 (confirming the Spoofed Number used with the calls); Email from NHPO to Brendan O'Donnell, New Hampshire Department of Justice, Office of the Attorney General (Jan. 22, 2024, at 9:11 AM) (on file in EB-TCD-24-00036094) (NHPO Complaint) (stating that the Spoofed Number is "my personal cell phone number," but that the caller ID "showed my [spouse's] name" because their name is "the name under which both our cell phones are billed through US Cellular."); Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750 ("On Friday, longtime New Hampshire democratic operative . . . confirmed to Politico that [they are] helping launch a super PAC [(Granite for America)] to encourage voters to write in Biden in the primary" and the NHPO is the "former chair of the New Hampshire Democratic Party.").

[14] NHPO Complaint ("I have not authorized these calls . . . . [My spouse] has not authorized these calls.").

[15] *See* Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750.

[16] "The Anti-Robocall Multistate Litigation Task Force is a 51-member collective of state Attorneys General, led by the Attorneys General of Indiana, North Carolina, and Ohio, which is focused on actively investigating and pursuing (continued….)

Traceback Group (ITG).[17] The investigation determined that Lingo Telecom, LLC (Lingo) was the originating provider for a number of these calls, i.e., the first provider in the call path.[18] Lingo identified Life Corp. (Life) as the party that transmitted the calls to Lingo.[19] In turn, Life identified that Voice Broadcasting Corp. (Voice Broadcasting) "use[d] Life's services and equipment to transmit" the calls via Life to originating providers.[20] Voice Broadcasting is an entity that offers to "call a targeted list of your prospects and play your message to them" and in "which Life shares common ownership and control."[21] Voice Broadcasting transmitted the calls at the request of Kramer its client.[22]

9. Kramer is a longtime political consultant who claims to have worked on campaigns in 38 different states and handled campaigns for 59 members of Congress.[23] He has been described as having "decades of experience working on federal, state and local campaigns[.]"[24] In his own words, Kramer is "someone who is knowledgeable about everything that's going on [in politics]."[25]

10. Email and text correspondence obtained from the parties involved reveals Kramer's orchestration of the illegal robocall campaign that ultimately affected thousands of potential New Hampshire Primary Election voters. In the lead up to the New Hampshire Primary Election, Kramer approached an acquaintance (Individual-1) familiar with AI technology about creating the Deepfake Message.[26] On Saturday, January 20, 2024, Kramer provided Individual-1 with a call script:[27]

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enforcement actions against various entities in the robocall ecosystem that are identified as being responsible for significant volumes of illegal and fraudulent robocall traffic routed into and across the country." Letter from Tracy Nayer, Special Deputy Attorney General, Consumer Protection Division, N.C. Dep't of Justice, to Talal Khalid, CEO, Telcast Network LLC, at n.1 (Nov. 3, 2023), https://ncdoj.gov/wp-content/uploads/2023/11/State-AG-Task-Force-NOTICE-Letter-to-TELCAST.pdf.

[17] The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. *See Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 23-719, 2023 WL 5358422, at *1, para. 1 (EB Aug. 18, 2023).

[18] *See* ITG Subpoena Response (Jan. 31, 2024) (on file in EB-TCD-24-00036094).

[19] *Id*.

[20] Life Subpoena Response, *supra* note 12, at Response to RFI No. 1.

[21] Voice Broadcasting, https://voicebroadcasting.com/default/ (last visited Aug. 13, 2024); Life Subpoena Response, *supra* note 12, at n.3.

[22] Life Subpoena Response, *supra* note 12, at Response to RFI No. 3.

[23] 77 WABC, Frank Morano Interviews & More, *Steve Kramer* (Feb. 28, 2024) https://www.listennotes.com/podcasts/frank-morano/steve-kramer-02-28-24-FgzNh3017wB/ (recording on file in EB-TCD-24-00036094) (Morano Podcast) at 11:49.

[24] Holly Ramer, *Political consultant behind fake Biden robocalls says he was trying to highlight a need for AI rules*, The Assoc. Press (Feb. 26, 2024), https://apnews.com/article/ai-robocall-biden-new-hampshire-primary-2024-f94aa2d7f835ccc3cc254a90cd481a99.

[25] Morano Podcast at 12:38.

[26] Joint Law Enforcement Interview with Steve Kramer (Feb. 29, 2024) (involving the FCC and New Hampshire Department of Justice, Office of the Attorney General) (recording on file in EB-TCD-24-00036094) (Kramer Interview) at 1:01:39 (Interviewer: "When did you ask [Individual-1] to do the Biden robocall, do you know?" Kramer: "Three days before I sent it out, maybe two days.").

[27] Kramer Subpoena Response, *supra* note 12, at email from Kramer to [Individual-1] (Jan. 20, 2024, at 8:57 AM) ("Attached script. We are launching around 6pm on Sunday, however I'd like to send finished product to my tech today to set up.").

New Hampshire auto call

This coming Tuesday is the New Hampshire Presidential preference primary.

(2 second pause for effect)

Republicans have been trying to push non-partisan and democratic voters to participate in their primary. What a bunch of Mularkey!! We know the value of voting Democrati ...when our votes count.

It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket.

Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.

(2 second pause)
If you would like to be removed from future calls, please press 2 now

Kramer claims he wrote the script himself and specifically incorporated the word "malarkey," which—according to Kramer—is President Biden's "signature catchphrase" and "gets people's attention."[28] Individual-1 then used software available through a website operated by Eleven Labs Inc. (Eleven Labs) to create the Deepfake Message in accordance with the script Kramer provided;[29] later that same day, Individual-1 emailed two variations of the Deepfake Message to Kramer.[30] Also on January 20, Kramer's father paid Individual-1 $150 for the Deepfake Message on Kramer's behalf.[31] President Biden was neither involved in creating the Deepfake Message, nor did he authorize the Deepfake Message.[32]

[28] Kramer Interview at 48:17 (Interviewer: "The statement that you used for the robocalls here in New Hampshire two days before the primary – who created that statement?" Kramer: "I did it."); *id.* at 49:24 (Kramer: "The Biden voice using 'malarkey' as his signature catchphrase gets people's attention."); *see also* Ben Guarino, *Joe Biden loves the word 'malarkey.' But nobody knows where it came from*, The Wash. Post (July 28, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/07/28/joe-biden-loves-the-word-malarkey-but-nobody-knows-where-it-came-from/.

[29] Vijay Balasubramaniyan, *Pindrop Reveals TTS Engine Behind Biden AI Robocall*, Pindrop, https://www.pindrop.com/blog/pindrop-reveals-tts-engine-behind-biden-ai-robocall (last visited July 15, 2024) (concluding that Eleven Labs Inc.'s text-to-speech engine generated the Deepfake Message); Alex Seitz-Wald, *A New Orleans magician says a Democratic operative paid him to make the fake Biden robocall*, NBC News (Feb. 23, 2024), https://www.nbcnews.com/politics/2024-election/biden-robocall-new-hampshire-strategist-rcna139760 ("[Individual 1] used Eleven Labs . . . to create the Biden robocall.").

[30] Kramer Subpoena Response, *supra* note 12, at email from [Individual-1] to Kramer (Jan. 20, 2024, at 10:13 AM) (attaching two variations of the Deepfake Message); *see also* Kramer Interview at 1:04:02 (Kramer: "This kid [Individual-1] seemed like he knew what he was doing and he could do it fast. And he did. And I would say that after I shot him the original script, he sent me one copy, and then maybe another copy a few minutes later, that he had worked on as far as the Biden voice.").

[31] Subpoena Response of Individual-1 (Mar. 20, 2024) (on file in EB-TCD-24-00036094) (Individual-1 Subpoena Response) at Screenshot_20240222_143959 Venmo (showing two payments from Kramer's father totaling $150.00); Kramer Interview at 58:11 (Kramer: "[Individual-1 is] a street magician. So when I paid him $150 in order to be able to create this call, I wanted to pay him a fair amount, what I thought would be a fair amount."); *id.* at 18:07 ("Some of my canvassers don't have bank accounts, so [Kramer's father is] the one that keeps track of the Venmos we send out, or CashApp, or different other entities.").

[32] *See Watch: White House holds briefing amid reports of AI-generated robocalls impersonating Biden in New Hampshire,* PBS News Hour (Jan. 22, 2024, Updated 3:51 PM EST), https://www.pbs.org/newshour/politics/watch-live-white-house-holds-daily-briefing-as-biden-and-harris-focus-on-reproductive-rights ("White House press secretary Karine Jean-Pierre confirmed Monday that the call 'was indeed fake and not recorded by the president.'").

11. Kramer needed a caller ID number to pair with the Deepfake Message. He ultimately selected a number associated with the NHPO, which was a carefully calculated decision.[33] Kramer knew he wanted a New Hampshire area code because as he later explained, if you are a resident of New Hampshire "when you see someone from New Hampshire calling you, you're more likely to pick up."[34] He also specifically wanted to use the telephone number of someone associated with the President Biden write-in campaign.[35] Kramer reviewed records pertaining to the NHPO's super PAC available on the Federal Election Commission website and found the NHPO's name and number.[36]

12. Meanwhile, on Friday, January 19, 2024, Kramer solicited Voice Broadcasting to procure "a Sunday night robo[call], probably 25k [calls] range."[37] On Saturday, January 20, Kramer emailed Voice Broadcasting a list of names and numbers for the "robo-call tomorrow,"[38] which Kramer later explained was a list of potential New Hampshire voters likely to vote for a Democrat in the Primary Election.[39] Kramer's instructions to Voice Broadcasting were specific: "Call[s] should go out at 6:15pm EST Sunday. Run to answer machines and live pickup . . . . we should be able to finish by 8:45pm."[40] About a half-hour later, Kramer sent another email to Voice Broadcasting with the Deepfake Message "for Sunday night."[41] On Sunday, January 21, Kramer instructed Voice Broadcasting to "use [the Spoofed Number] as the caller ID number" for the calls.[42] With Kramer's permission, Voice Broadcasting added a sentence to the end of the Deepfake Message that instructed potential voters to "call [the Spoofed Number] to be removed from future calls."[43] By 7:12 p.m. on the night of Sunday, January 21, Voice Broadcasting—"using Life's services and equipment"—had initiated 9,581 calls carrying the Deepfake Message to potential New Hampshire voters using the Spoofed Number as the caller ID number.[44]

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[33] *See* Kramer Interview, *supra* note 26, at 1:33:29 (Interviewer: "And did I hear you correctly – you provided Voice Broadcasting with the opt-out phone number that belonged to the former New Hampshire DNC Chairman?" Kramer: "Correct. That was a deliberate move by me[.]").

[34] *Id.* at 1:52:13 (Kramer: "I wanted to use someone in-state, in New Hampshire, because when you see someone from New Hampshire calling you, you're more likely to pick up, which was my intent.").

[35] *Id.* at 1:52:33 (Interviewer: "How did you decide to use [NHPO's] number out of all of the 603 New Hampshire numbers?" Kramer: "Well, like I discussed before, I looked up on the FEC filings for that particular write-in campaign. [They were] listed as treasurer."); *id.* at 31:43 (Interviewer: "Kramer, you keep referring to the former chair. What's the former chair's name?" Kramer: "Good question. I can't remember. [They are] well-publicized in the news, I really don't know [their] name. [They were] running the Biden write-in campaign."); *id.* at 1:54:52 (Kramer: "I don't do anything by accident, at least I try not to. So again, the person [NHPO] was chosen because of [their] contacts within the media, certainly in New Hampshire and probably in other places as well[.]").

[36] *Id.* at 32:35 (Interviewer: "How did you get [NHPO's] phone number?" Kramer: "I looked on the FEC filing for that committee and [they] came up as the treasurer."); *id.* at 1:52:37 (Kramer: "I looked up on the FEC filings for that particular write-in campaign. [They were] listed as treasurer.").

[37] Life Subpoena Response, *supra* note 12, at LIFE-03-0008.

[38] *Id.* at LIFE-03-0022 (attaching a file titled "New Hampshire DEM FEB 2020 Presidential voters").

[39] Kramer Interview, *supra* note 26, at 26:30 (Kramer: "I sent [the call] out to 5,000 people who were registered Democrats who had voted before, so more likely Democrats to vote.").

[40] Life Subpoena Response, *supra* note 12, at LIFE-03-0022.

[41] *Id.* at LIFE-03-0023.

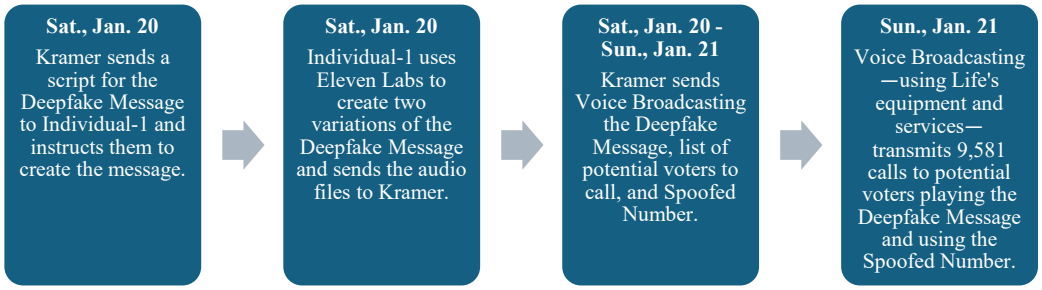
[42] *Id.* at LIFE-03-0024.

[43] *See id.* at Response to RFI No. 1.

[44] *Id.* at Response to RFI Nos. 1-2 (confirming that Voice Broadcasting "initiated 9,581 calls on January 21, 2024, using Life's services and equipment with [the Spoofed Number] as the caller identification number"); *id.* at LIFE-03-0013 (showing last call placed at 7:12 p.m.).

13. On Sunday, January 21, 2024, at about 6:17 p.m., the NHPO received a call from a man who had just received a "political call" from what appeared to be the NHPO's phone number.[45] The NHPO explained to the caller that they had not called him and the NHPO "shrugged it off."[46] By approximately 8:00 p.m., while out to dinner, the NHPO received 10 more calls from unfamiliar numbers.[47] The NHPO returned one of the calls and reached a woman who explained she received a call from President Biden, and the caller ID showed the NHPO's spouse's name.[48] The woman stated that the message said to call the Spoofed Number to have her name removed from the list, and she asked the NHPO to have her name removed from the list.[49] The NHPO realized that they had to "leave dinner, go home, and try to fix this."[50] They then "spent the rest of the evening and all of the following day . . . focused on correcting the misinformation for as many people as [they] could through Election Day, January 23."[51] On Monday morning, January 22, the NHPO contacted the New Hampshire Department of Justice, Office of the Attorney General, reported the calls, and warned of an effort at voter suppression and election interference.[52] The NHPO reported being "deeply concerned about [their] phone number and name being connected with this deepfake call that tried to prevent people from voting."[53]

14. The flow chart below depicts the timeline of key events discussed above:



15. The news media began covering the calls almost immediately after they were placed. On the morning of Monday, January 22, 2024, Kramer texted Individual-1 a link to an article covering the robocalls and wrote "[s]hhhhhhh."[54] Individual-1 reacted with disbelief.[55] Later, Kramer told Individual-

[45] NHPO Complaint, *supra* note 13.

[46] *Id.*

[47] *Id.*

[48] *Id*.

[49] *Id.*

[50] NHPO Decl. at para. 14, *League of Women Voters of New Hampshire et al. v. Kramer et al.*, No. 1:24-cv-73 (D.N.H. filed Apr. 18, 2024), ECF No. 46-2 (NHPO Decl.).

[51] *Id.* at para. 15.

[52] NHPO Complaint, *supra* note 13.

[53] NHPO Decl. at para. 16.

[54] Individual-1 Subpoena Response, *supra* note 31, at text message from Kramer to Individual-1 (Jan. 22, 2024, at 10:28 AM).

[55] *Id.*

1 over the phone that because the call was 'spoofed' [] it could not be traced back."[56] Despite the ensuing news frenzy, Kramer remained silent for weeks about the Deepfake Message he had instigated.

16. On February 23, 2024, Individual-1 publicly disclosed creating the Deepfake Message for Kramer and being asked to delete their email communications reflecting Kramer's involvement.[57] Three days later, Kramer publicly accepted responsibility for the calls.[58] He later stated, "I believe in my actions and I did them deliberately."[59] He claimed he had no intention of "apologiz[ing] to the people who might have gotten that call" despite acknowledging he caused them to "feel disenfranchised, or in some way that democracy has been disrupted."[60] Kramer claimed the calls were not made on behalf of any other person or entity.[61]

C. Originating Service Provider Told to Cease and Desist

17. Following traceback information provided by the ITG, on February 6, 2024, the Bureau sent Lingo a cease-and-desist letter demanding that Lingo stop originating unlawful robocall traffic on its network.[62] Concurrently with the letter, the Bureau issued a public notice to all U.S.-based voice service providers informing them that if Lingo failed to effectively mitigate illegal robocall traffic within 48 hours of the notice then other service providers could block all calls or cease to accept any traffic from Lingo without liability under the Communications Act or the FCC's rules.[63] On the same day, both the New Hampshire Department of Justice, Office of the Attorney General and the Task Force demanded that

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[56] Decl. of Individual-1 at para. 15, *League of Women Voters of New Hampshire et al. v. Kramer et al.*, No. 1:24-cv-73 (D.N.H. filed Apr. 18, 2024), ECF No. 46-8.

[57] Alex Seitz-Wald, *A New Orleans magician says a Democratic operative paid him to make the fake Biden robocall*, NBC News (Feb. 23, 2024), https://www.nbcnews.com/politics/2024-election/biden-robocall-new-hampshire-strategist-rcna139760.

[58] *See id.* ("Steve Kramer initially did not respond to multiple requests for comment."); Marcia Kramer, *Steve Kramer explains why he used AI to impersonate President Biden in New Hampshire*, CBS News (Feb. 26, 2024), https://www.cbsnews.com/newyork/news/steve-kramer-explains-why-he-used-ai-to-impersonate-president-biden-in-new-hampshire/ ("A political consultant who represents several New York politicians admits he's the man behind the fake robocall telling President Joe Biden's supporters not to vote in New Hampshire.").

[59] Kramer Interview, *supra* note 26, at 2:17:37 (Kramer: "I believe in my actions and I did them deliberately. And I don't care about what other people think.").

[60] *Id.* at 1:11:25 (Kramer: "And I'm not going to apologize to the people who might have gotten that call, I think that sometimes that's the way it is."); Morano Podcast, *supra* note 23, at 19:34 (Kramer: "The people who feel disenfranchised, or in some way that democracy has been disrupted, if I didn't do this, this regulations, these regulations would have never changed. And in the same way someone who can get through airport security and then is actually working for a security agency in order to be able to show the flaws.").

[61] Kramer Interview, *supra* note 26, at 1:59:22 (Interviewer: "So, to close the loop on this, it was your idea to use this number, and you didn't communicate with anyone else about this part of the strategy behind the calls?" Kramer: "Correct."); Morano Podcast, *supra* note 23, at 25:10 (Kramer: "Dean Phillips' campaign had no idea I was doing this. I had a different contract with them to get them on the ballot in New York and in Pennsylvania and we did both. They had no knowledge."); *id.* at 25:22 (Kramer: "The company that I used in order to be able to send out these calls . . . . [t]hey had no knowledge of it."); *id.* at 25:33 (Kramer: "The person who created [the recording], [Individual-1], had no knowledge of how I was going to use it.").

[62] Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Alex Valencia, Chief Compliance Officer, Lingo Telecom LLC, 2024 WL 488250 (Feb. 6, 2024), https://docs.fcc.gov/public/attachments/DOC-400264A1.pdf.

[63] *Robocall Enforcement Notice to All U.S.-Based Voice Service Providers*, Public Notice, DA 24-102, 2024 WL 488244 (Feb. 6, 2024), https://docs.fcc.gov/public/attachments/DA-24-102A1.pdf.

Life cease and desist from respectively violating New Hampshire election law and transmitting suspected illegal robocall traffic.[64]

D. Procedural History

18. On May 24, 2024, the Commission released the NAL proposing a $6,000,000 forfeiture against Steve Kramer for the apparent violations of the Truth in Caller ID Act of 2009 and section 64.1604 of the Commission's rules by perpetrating an illegal robocall campaign that transmitted thousands of spoofed calls.[65] The NAL ordered Kramer to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.[66] Kramer has done neither.

19. Also on May 24, 2024, the New Hampshire Department of Justice, Office of the Attorney General announced Kramer had been indicted on charges of felony voter suppression and misdemeanor impersonation of a candidate for his role in perpetrating the illegal robocalls.[67]

III. DISCUSSION

20. In the NAL, the Commission found that Kramer apparently violated the Truth in Caller ID Act and section 64.1604 of the Commission's rules and proposed a forfeiture in accordance with section 503(b) of the Communications Act[68] and section 1.80 of the Commission's rules.[69] We take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[70] Having done so, we affirm the $6,000,000 forfeiture proposed in the NAL.[71]

21. Kramer's activities violated the Truth in Caller ID Act, which makes it unlawful to "cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value."[72] The Commission's implementing regulation at section 64.1604 of its rules states that this prohibition applies to a person or entity who knowingly causes, "directly, or indirectly, any caller

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[64] Press Release, N.H. Dep't of Justice, Voter Suppression AI Robocall Investigation Update (Feb. 6, 2024), https://www.doj.nh.gov/news-and-media/voter-suppression-ai-robocall-investigation-update (NH Investigation Update) ("Today the Election Law Unit is issuing a cease-and-desist order to Life Corporation[.]"); Letter from Tracy Nayer, Special Deputy Attorney General, Consumer Prot. Div., N.C. Dep't of Justice, to Walter Monk, Founding Owner, Life Corporation, *et al.*, (Feb. 6, 2024), https://ncdoj.gov/wp-content/uploads/2024/02/State-AG-Task-Force-NOTICE-Letter-to-LIFE-CORP-Feb.-2024-1.pdf.

[65] NAL, *supra* note 3, at *1, para. 1. On May 28, 2024, the Commission also issued a Notice of Apparent Liability against Lingo proposing a penalty of $2,000,000 for apparent violations of section 64.6301(a) of the Commission's rules. *Lingo Telecom LLC*, Notice of Apparent Liability for Forfeiture, FCC 24-60, 2024 WL 2828369, at *4, para. 9 (May 23, 2024). Lingo subsequently resolved this matter by entering into a Consent Decree with the Bureau requiring Lingo to pay a $1 million civil penalty, adopt more thorough Know-Your-Customer and Know-Your-Upstream-Provider practices, and abide by strict caller ID authentication processes with respect to the Commission's Secure Telephone Identity Revisited and Signature-based Handling of Asserted Information Using toKENs (STIR/SHAKEN) rules. *Lingo Telecom, LLC*, Consent Decree, DA 24-790, 2024 WL 3915892 (Aug. 21, 2024).

[66] *Id.* at *12, *13, paras. 46, 49.

[67] Press Release, N.H. Dep't of Justice, Steven Kramer Charged with Voter Suppression Over AI-Generated President Biden Robocalls (May 23, 2024), https://www.doj.nh.gov/news-and-media/steven-kramer-charged-voter-suppression-over-ai-generated-president-biden-robocalls.

[68] 47 U.S.C. § 503(b).

[69] NAL, *supra* note 3, at *12, paras. 44-45; 47 U.S.C. § 503(b); 47 CFR § 1.80.

[70] 47 U.S.C. § 503(b)(2)(E).

[71] *See id*.

[72] *Id.* § 227(e)(1).

identification service to transmit or display misleading or inaccurate caller identification information" with the intent specified in the statute.[73]

22. As discussed in the NAL and in more detail below, Kramer knowingly used misleading or inaccurate caller ID information with the intent to defraud and cause harm:

> *Knowingly:* Kramer very specifically selected the Spoofed Number for the calls, with full knowledge it was associated with the NHPO, and explicitly directed Voice Broadcasting to place 9,581 calls using the Spoofed Number as the caller ID.
>
> *Misleading or Inaccurate:* As a result of Kramer's actions, the caller ID transmitted with the calls was both inaccurate and misleading because the number was associated with the NHPO and their spouse, neither of whom were the actual source of the calls.
>
> *Intent to Defraud:* Kramer intended to fraudulently deprive voters of their right to cast a ballot in the New Hampshire Primary Election by making false representations of material facts, including by conveying misleading voter eligibility information, using an imitation of President Biden's voice to deliver that information, and indicating that the call was associated with a local political leader.
>
> *Intent to Cause Harm:* Kramer intended to cause harm to potential voters and the election process by fueling a false narrative giving potential voters fake information in order to convince them to forgo their right to vote in an election. He also intended to cause harm to the NHPO by subjecting them to a stream of pointless callbacks from confused call recipients.

23. As set forth in the NAL and as discussed in more detail below, we impose a forfeiture in the amount of $6,000,000. We calculate the forfeiture by assessing a base forfeiture of $1,000 per each unlawful call. We then apply an upward adjustment of 100% to the proposed amount to reflect the egregiousness, nature, circumstances, extent, and gravity of the violations for which Kramer is culpable. As we have in other mass-spoofing cases, we analyze and verify a portion of the unlawfully spoofed calls and apply the forfeiture amount to those verified calls. In this case, the Bureau verified a subset of 3,000 unlawful spoofed calls.

A. Kramer Knowingly Caused the Transmission of Inaccurate and Misleading Caller ID Information

24. The NAL concluded that Kramer knowingly caused the calls at issue by directing—in detail—Voice Broadcasting to transmit spoofed calls.[74] Kramer provided Voice Broadcasting with the date and time to make the calls, the list of voters to call, the recording of the message to be played, and the spoofed caller ID number to transmit with the calls.[75] Kramer instructed Voice Broadcasting to play the recording when either a person answered the call or when the person's voicemail was activated.[76] Ultimately, Voice Broadcasting transmitted 9,581 calls through Life pursuant to Kramer's instructions.[77]

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[73] 47 CFR § 64.1604(a).

[74] NAL, *supra* note 3, at *6, paras. 20-21; *see generally Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al*., CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7980-81, para. 30 (2015) (stating that the Commission looks at "the totality of the facts and circumstances" to determine who is responsible for making a call for purposes of the TCPA and that a person can be liable for making a call even if he doesn't physically place the call, if he is "so involved in placing the as to be deemed to have initiated it" and further noting that one of the factors that can be considered is "the extent to which a person willfully enables fraudulent spoofing of telephone numbers").

[75] *See supra* para. 12.

[76] *Id.*

[77] *Id.*

25. The caller ID number Kramer instructed Voice Broadcasting to use was both inaccurate and misleading, which Kramer not only knew, but planned for and intended. The caller ID information was inaccurate because it did not reflect a number associated with the party causing the calls, i.e., Kramer, but instead was the NHPO's cell phone number.[78] The caller ID information was also misleading because it reflected a New Hampshire area code.[79] Indeed, Kramer specifically wanted a New Hampshire number because "when you see someone from New Hampshire calling you, you're more likely to pick up, which was my intent."[80] Kramer further misled call recipients by using the telephone number associated with a prominent member of the New Hampshire Democratic Party who was not connected to the calls.[81] He selected a number associated with the NHPO because of their connection to the campaign to write-in President Biden's name in the Primary Election.[82] All of these carefully calculated decisions demonstrate Kramer knowingly caused the calls to be made with inaccurate and misleading caller ID information.

B. Kramer Intended to Defraud and Cause Harm

26. Under the Truth in Caller ID Act, "intent" encompasses a broad scope of objectives, namely, an intent to defraud, cause harm, or wrongfully obtain something of value.[83] As detailed in the NAL[84] and below, the evidence reflects that Kramer acted with intent to defraud and cause harm.

1. Kramer Intended to Defraud Potential Voters

27. The elements of common law fraud are: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; and (5) an action that is taken in reliance upon the representation.[85] The fifth element—an action taken in reliance upon the representation—is not necessary to establish an intent to defraud under the Truth in Caller ID Act.[86] A violation of the Truth in Caller ID Act based on an intent to defraud requires only a showing of the first four elements to establish the necessary intent, not a successful result.[87]

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[78] *See supra* para. 11.

[79] Kramer Interview, *supra* note 26, at 1:52:16.

[80] *Id.* at 1:52:16.

[81] NHPO Complaint, *supra* note 13 ("I have nothing to do with the calls purporting to be from President Biden. I have not authorized these calls.").

[82] *See supra* para. 11.

[83] 47 U.S.C. § 227(e)(1).

[84] NAL, *supra* note 3, at *7-*9, paras. 23-31.

[85] *See Pence v. United States*, 316 U.S. 332, 338 (1942); *Hercules & Co. v. Shama Rest. Corp.*, 613 A.2d 916, 923 (D.C. 1992); *see also Marini v. Adamo*, 995 F. Supp. 2d 155, 199-200 (E.D.N.Y. 2014) (citing *Chanavil v. Gulatti*, 169 F.3d 168, 171 (2d Cir. 1999)); *M & D Cycles, Inc. v. Am. Honda Motor Co.*, 208 F. Supp. 2d 115, 120 (D.N.H. 2002) ("To establish fraud, a plaintiff must prove that the defendant intentionally made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely on it. . . . In addition, the plaintiff must prove that he justifiably relied on the misrepresentation, to his detriment."), *aff'd*, 70 F. App'x 592 (1st Cir. 2003).

[86] *See Sumco Panama SA, Sumco Panama USA, Virtual Telecom Kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, And Posting Express Inc.*, Forfeiture Order, 38 FCC Rcd 7235, 7239, para. 11 (2023) ("While reliance on the misrepresentation is required under common law, only a showing of intent to defraud rather than actual reliance and harm is required under the Truth in Caller ID Act.") (quotations omitted); *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group - Cayman*, Forfeiture Order, 36 FCC Rcd 6225, 6235, para. 20 (2021) (*Rising Eagle Forfeiture Order*) (same).

[87] *See Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6235, para. 20.

28. *False Representations of Material Facts.* Kramer's calls conveyed several false representations of material facts. First, the Deepfake Message falsely conveyed that President Biden recorded the message, which he did not; the voice was an AI-generated recording mimicking the president's voice.[88] A message seemingly appearing to come from the president of the United States is likely to carry great weight.[89] Second, the Deepfake Message falsely conveyed that a voter could not vote in the Primary Election *and* the November presidential election: "We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election."[90] A misrepresentation that deceptively tells a potential voter that the president of the United States is telling them to refrain from voting in an election in order to "save" their vote for a later election is a false representation of material facts, and here poses potentially "devastating effects on the democratic election process."[91] Third, the calls transmitted the Spoofed Number as the caller ID and the Deepfake Message further instructed listeners that they could call the Spoofed Number to be removed from future calls, which of course was not the case.[92] Use of a New Hampshire area code and number associated with a prominent New Hampshire Democrat, i.e., the NHPO, added significant legitimacy to the false Deepfake Message.[93] Failure to provide an accurate name and number of the caller prevented call recipients from opting out of receiving future calls and removed an important privacy protection, and thus this omission is material.[94]

29. *Knowledge of Falsity*. Kramer was well aware that each of these misrepresentations was false because he himself carefully designed each one in order to create a specific outcome—deterring potential voters from voting. He knew the message was not created by President Biden; he instructed Individual-1 to create an AI-generated deepfake message in accordance with a script he wrote himself.[95] He knew that voters need not refrain from voting in the New Hampshire Primary Election in order to "save" their vote for November; Kramer is a long-time political consultant well-versed in basic voting principles.[96] Lastly, he knew that calling the Spoofed Number would not remove voters from the calling list; the NHPO was not associated with the robocalling campaign in any way and thus had no ability to remove voters from Kramer's list.[97]

30. *Intent to Deceive*. Kramer made all of these misrepresentations with the intent to deceive voters. He wanted voters to believe that they were hearing from President Biden, as evidenced by his (a) instructions to Individual-1 to use AI to make the message sound like President Biden and (b) incorporation of Biden's catchphrase term, "malarkey," into the script.[98] Kramer wanted voters to believe

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[88] *See supra* paras. 6, 10.

[89] *See* Kramer Interview, *supra* note 26, at 26:30 (Kramer: "I sent [the call] out to 5,000 people who were registered Democrats who had voted before, so more likely Democrats to vote.").

[90] *See supra* para. 6.

[91] *See* NH Investigation Update, *supra* note 64; *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) ("There is no right more basic in our democracy than the right to participate in electing our political leaders."); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society[.]").

[92] *See supra* paras. 6, 12.

[93] *See supra* paras. 7, 11.

[94] *See* 47 CFR § 64.1200(b)(1)-(3) (requiring artificial or prerecorded voice messages state the identity of the caller, telephone number of the caller, and when left on answering machines to include "a toll free number that enables the called person to call back at a later time").

[95] *See supra* para. 10.

[96] *See supra* para. 9.

[97] *See supra* paras. 7, 11.

[98] *See supra* para. 10.

that voting in the Primary Election meant they could not vote in November, as evidenced by the language of the script instructing voters to "save" their vote.[99] That Kramer wanted voters to believe the calls came from someone with a New Hampshire area code and specifically from the NHPO, a prominent figure in the super PAC that was leading President Biden's write-in campaign in New Hampshire—instead of himself—is evidenced by his use of a number associated with the NHPO, and by his inclusion of that number in the Deepfake Message itself as the number to call to be removed from future calls.[100] Kramer admitted that his belief was voters felt "duped" by his efforts.[101]

2. Kramer Intended to Cause Harm to Potential Voters by Depriving Them of Their Vote in the Primary Election and the NHPO by Subjecting Them to a Stream of Unsettling and Unwarranted Callbacks

31. Kramer intended to harm potential voters by giving them false information in order to convince them to forgo their right to vote in an election.[102] Kramer himself acknowledged—without regret—that people may have felt "disenfranchised" or that "democracy has been disrupted" as a result of his calls.[103] Kramer's calls not only harmed potential voters but also interfered with the Primary Election and potentially could have interfered with the November 2024 General Election. Interfering with an election undermines public trust in the electoral process that is the foundation of our democracy.[104]

32. Kramer also intended to harm the NHPO by using the Spoofed Number as the caller ID for the calls and explicitly instructing recipients to call the Spoofed Number to avoid future calls.[105] We have long recognized that receiving unsolicited "call backs" as a result of having one's number spoofed is a "harm" under the Truth in Caller ID Act.[106] The NHPO received a stream of such calls as a result of Kramer using the Spoofed Number.[107] Indeed, Kramer admits he specifically anticipated that potential

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[99] *See supra* para. 6.

[100] *See supra* paras. 6-7, 11-12.

[101] Marissa Tansino, *Man says he was behind AI robocalls impersonating Joe Biden before New Hampshire Primary*, WMUR-9 Manchester (Feb. 28, 2024), https://www.wmur.com/article/joe-biden-ai-robocall-new-hampshire-steve-kramer/60005189 (Kramer: "Now there's real impact and it's going to keep happening, so that we have real regulations that protect those same people who thought they were duped[.]").

[102] *See supra* para. 28.

[103] Morano Podcast, *supra* note 23, at 19:34 (Kramer: "The people who feel disenfranchised or in some way that democracy has been disrupted, if I didn't do this, this regulations, these regulations would have never changed. And in the same way someone who can get through airport security and then is actually working for a security agency in order to be able to show the flaws? You know this in a similar way, not exactly the same but in a similar way allows an innocuous happening to be seen by everybody. You know Thomas Jefferson used to say, you do a thing act as the whole world is watching. And they were. And everyone was watching on that Monday and Tuesday of the primary."); *see also* Kramer Interview, *supra* note 26, at 2:17:37 (Kramer: "I believe in my actions and I did them deliberately.").

[104] *See* NH Investigation Update, *supra* note 64 (quoting New Hampshire Attorney General Formella: "Ensuring public confidence in the electoral process is vital. AI-generated recordings used to deceive voters have the potential to have devastating effects on the democratic election process.").

[105] *See supra* paras. 6-7, 11.

[106] *See Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 5418, 5424, para. 18 ("'Neighbor spoofing' also harms the true subscriber of the spoofed number when affected consumers redial the spoofed number.").

[107] *See supra* para. 13.

voters would futilely attempt to return calls to the NHPO,[108] subjecting the NHPO to annoyance and intruding on their privacy.

3. Kramer Used Generative AI Technology and Spoofing to Perpetrate Election Interference

33. Kramer's actions convey his intent to utilize dishonest and deceptive tactics to disrupt the New Hampshire Primary Election. He wanted to send a message to voters telling them not to vote. Kramer no doubt understood that any phone message using his own number and his own voice would be a pointless exercise. But he knew that a lot of people—potentially thousands in New Hampshire—would care what the president of the United States had to say; and he knew New Hampshire Primary Election voters would pay attention to a phone call from the NHPO, who was a prominent local figure.[109] He also knew that he did not want to get caught for any of the deceptions he sought to undertake.

34. Generative AI technology and spoofing made it possible for Kramer to achieve these harmful objectives. He engaged the help of an acquaintance—Individual-1—whom he knew to be familiar with AI technology.[110] Kramer gave Individual-1 specific instructions on cloning President Biden's voice, including instructing Individual-1 to use the word "malarkey" in the script Kramer drafted, which he knew to be the president's preferred nomenclature.[111]

35. Not surprisingly, Kramer likely realized that faking the president's voice but using his own phone number to send the message to voters would not achieve the disruptive effects in the election that he intended. So in addition to misleading potential voters about the message, he also chose to mislead them about who was calling them, using a number associated with the NHPO.[112] The use of AI technology can be beneficial; however, the manner in which Kramer used it was detrimental to the free exercise of the right to vote in a democracy. The use of spoofing technology can be detrimental as well.[113] The combination of these technologies in a single scheme to interfere with an election can be potent. In addition to interfering with the freedom to vote, Kramer caused havoc for the NHPO, whose private number was made known to thousands of call recipients. The NHPO was implicated in egregious misconduct in which they had absolutely no involvement.[114] The NHPO was subjected to phone calls throughout the evening of January 21, while the NHPO was at dinner with their spouse, with comments and questions concerning a matter the NHPO knew nothing about.[115] Kramer sought to disrupt the New Hampshire Primary Election and knowingly violated the NHPO's privacy.

C. Forfeiture

36. We affirm the Commission's conclusions in the NAL and impose a $6,000,000 forfeiture against Kramer. Consistent with the proposed approach in the NAL, the base forfeiture appropriate for the Truth in Caller ID Act violations here is $1,000 per call, which we increase by 100% in light of the

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[108] *See* Kramer Interview, *supra* note 26 at 1:57:15 (Kramer: "Usually [the number] is generic in nature, and if we do the campaign number, I ask them to put a line that isn't going to get tied up, because you are going to get a response. Every time you put out an automated call, everybody likes automated calls. So sometimes they like to complain."); *id.* at 28:03 (Kramer: "I put that number because I knew [NHPO] would blow it up.").

[109] *See id.* at 1:16:55 (Kramer explaining use of an AI-generated voice of a known politician causes a "tremendous jump" in poll responsiveness).

[110] *See supra* para. 10.

[111] *See id.*

[112] *See supra* para. 11.

[113] *See supra* para. 5.

[114] *See supra* paras. 7, 11.

[115] *See supra* para. 13.

circumstances present, and multiply by the number of verified calls to yield a total forfeiture of $6,000,000.

37. The Commission may "proceed expeditiously . . . and, where appropriate, assess a forfeiture penalty against, any person or entity engaged in prohibited caller ID spoofing without first issuing a citation."[116] The Commission's rules authorize a forfeiture of up to $14,067 for each spoofing violation.[117] Unlike forfeitures assessed under section 503(b)(1)(B) of the Communications Act, "the Truth in Caller ID Act does not require 'willful' or 'repeated' violations to justify imposition of a penalty"[118]—though the violations at issue here would easily meet that standard. Thus, the Commission is not required to demonstrate the "conscious and deliberate commission or omission of such act" or that such act happened more than once or for more than one day to propose a forfeiture for unlawful spoofing.[119]

38. In exercising its forfeiture authority, the Commission considers 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."[120] The Commission may adjust a base forfeiture upward or downward based on various criteria.[121] Among other criteria, the Commission may apply an upward adjustment for violations that are intentional, involve egregious misconduct, or cause substantial harm.[122]

1. We Impose a Base Forfeiture of $1,000 Per Unlawful Spoofed Robocall

39. The Commission has utilized a base forfeiture of $1,000 per unlawful spoofed robocall in past mass-spoofing enforcement actions.[123] The Commission has applied the $1,000 amount in prior cases on the basis that the aggregate forfeiture would serve the dual goals of punishment and deterrence, and that higher amounts would be unlikely to achieve a more effective result.[124] We believe that rationale applies to this case as well and thus impose a base forfeiture amount of $1,000 per violation.

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[116] *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114, 9132, para. 47 (2011) (*Truth in Caller ID Order*); *see also* 47 U.S.C. § 227(e)(5)(A)(ii) ("Paragraph (5) of section 503(b) of this title shall not apply in the case of a violation of this subsection."). The Truth in Caller ID Act requires that the Commission provide the notice required under section 503(b)(3) (notice and an opportunity for a hearing before the Commission or an administrative law judge) or section 503(b)(4) of the Communications Act (Notice of Apparent Liability) before assessing a forfeiture for unlawful spoofing. *See* 47 U.S.C. § 227(e)(5)(A)(iii). The NAL provided the required notice under section 503(b)(4) of the Communications Act.

[117] 47 CFR § 1.80(b)(4); *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. 23, 2023); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

[118] *Truth in Caller ID Order*, 26 FCC Rcd at 9133, para. 48; *see also* 47 CFR § 1.80(a)(4).

[119] 47 U.S.C. § 312(f)(1)-(2) (defining "willful" and "repeated").

[120] *Id.* § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11).

[121] *See* 47 CFR § 1.80(b)(11) tbl. 3.

[122] *See id.*

[123] *See, e.g.*, *Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 728, para. 54 (2021) (*Rhodes Forfeiture Order*); *Rising Eagle Forfeiture Order*, *supra* note 86, at 6256-57, para. 59 (same).

[124] *See, e.g.*, *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5948, 5963, para. 38 (2020).

2. Kramer's Intentional, Egregious, and Harmful Actions Warrant a 100% Upward Adjustment

40. The Commission considers specific upward and downward adjustment criteria which may increase or decrease the base forfeiture, including—among other criteria—whether the violation was minor, whether the violation involves egregious misconduct, whether the violation was intentional, and whether the violation caused substantial harm.[125] Based on the balancing of the criteria that are applicable here, we find that the circumstances warrant a 100% upward adjustment from the base penalty. We base this finding on our assessment that Kramer's violations caused substantial harm, were intentional, and constituted egregious misconduct.

41. *Substantial Harm.* Kramer's illegal robocalls—nearly 10,000 of them—caused harm in multiple ways to multiple people. The Deepfake Message aimed to deceive potential voters about who was calling them and convince them to not exercise their right to vote.[126] The calls further risked degrading the general public's faith in elections. Kramer's actions also harmed the NHPO, who received a slew of calls to their personal cell phone from individuals seeking to be removed from future calls.[127] This factor weighs in favor of an upward adjustment.

42. *Intentional Misconduct.* Kramer designed and executed this scheme with purpose.[128] He wrote the script used to create the Deepfake Message.[129] He carefully selected the Spoofed Number knowing it was associated with the NHPO.[130] He provided detailed instructions to Voice Broadcasting to launch the campaign,[131] which as he explained in his own words, "I don't do anything by accident."[132] This factor weighs in favor of an upward adjustment.

43. *Egregious Misconduct*. Kramer sent thousands of potential voters a prerecorded AI-generated voice message that imitated the voice of the president of the United States.[133] The message he scripted told people not to vote in the New Hampshire primary.[134] And he did so under the cover of the phone number of an unknowing and unconsenting local political leader.[135] Further, he acted without remorse, publicly claiming that his actions were justified to pursue his own agenda.[136] The egregiousness of this conduct—interfering with an election—undermines public trust in the electoral process. This factor weighs in favor of an upward adjustment.

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[125] *See* 47 CFR § 1.80(b)(11) tbl. 3; *see also The Comm'n's Forfeiture Policy Statement & Amend. of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17100-17101, para. 27 (1997).

[126] *See supra* paras. 6, 28.

[127] *See supra* para. 13.

[128] *See supra* para. 16.

[129] *See supra* para. 10.

[130] *See supra* para. 11.

[131] *See supra* para. 12.

[132] *See* Kramer Interview, *supra* note 26, at 1:54:53; *see also id*. at 2:17:37 (Kramer: "I believe in my actions and I did them deliberately.").

[133] *See supra* para. 6.

[134] *Id.*

[135] *See supra* paras. 7, 11, 13.

[136] *See supra* para. 16.

44. Lastly, in assessing a forfeiture, the Commission may consider "such other matters as justice may require."[137] Kramer's misuse of AI technology to disseminate false information through an illegal robocall campaign warrants an increased penalty as a matter of justice. Kramer misused AI technology to clone the voice of the president to deceive voters and interfere with an election. This conduct erodes the public's trust in our communication networks and democracy itself, and warrants a substantial penalty.

3. We Apply the Adjusted Base Forfeiture Amount to a Subset of Unlawful Spoofed Calls

45. Lastly, as has been the case in prior spoofing enforcement actions,[138] we apply the base forfeiture to a subset of calls which the Commission verified to be unlawful. The reasons for doing so, rather than proposing a forfeiture based on the total number of spoofed calls, are pragmatic. First, in some cases, depending on the specific spoofing scheme, it can be time-consuming to analyze every spoofed call. Second, in large spoofing schemes, we find that applying a base forfeiture amount (with any applicable upward or downward adjustment) to a subset of verified calls results in a proposed forfeiture that achieves the dual goals of penalizing wrongful conduct and preventing it from recurring. Each case is unique, and we must use our discretion in proposing an appropriate penalty to meet the specific circumstances.

46. The Bureau reviewed a sample of 3,000 of the 9,581 robocalls for violations of the Truth in Caller ID Act.[139] The Bureau verified that the Spoofed Number was used for each of the 3,000 calls.[140]

47. In sum, as proposed in the NAL, we increase the base forfeiture of $1,000 by 100% to yield a $2,000 per-call adjusted base penalty. We multiply that by the subset of 3,000 verified calls to yield a total forfeiture of $6,000,000.

IV. CONCLUSION

48. We find that Kramer is responsible for knowingly causing thousands of calls that used misleading and inaccurate caller ID information with the intent to defraud and cause harm in violation of section 227(e) of the Communications Act and section 64.1604 of the Commission's rules. As such, Kramer is liable for a forfeiture of $6,000,000.

V. ORDERING CLAUSES

49. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80,[141] Steve Kramer **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six million dollars ($6,000,000) for violations of section 227(e) of the Communications Act, 47 U.S.C. § 227(e), and section 64.1604 of the Commission's rules, 47 CFR § 64.1604.

50. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.[142] Steve Kramer shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal

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[137] 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11).

[138] *See, e.g.*, *Rhodes Forfeiture Order*, *supra* note 123, at 728, para. 54 (multiplying the base forfeiture amount by the number of verified spoofed calls to reach a total proposed base forfeiture); *Rising Eagle Forfeiture Order*, *supra* note 86, at 6256-57, para. 59 (same).

[139] *See* Verified Call Detail Records (on file in EB-TCD-24-00036094); Decl. of B. Labbor, FCC Enforcement Bureau (May 1, 2024) (on file in EB-TCD-24-00036094) (Labbor Decl.) (explaining how the calls were verified).

[140] Labbor Decl.

[141] 47 CFR § 1.80.

[142] *Id.*

Communications Commission, at lisa.ford@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.[143]

51. In order for Steve Kramer to pay the forfeiture, Steve Kramer shall notify Lisa Ford, Enforcement Bureau, Federal Communications Commission, at lisa.ford@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:[144]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[145] or printed CORES form[146] must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 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)[147] 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

[143] 47 U.S.C. § 504(a).

[144] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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

[146] 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.

[147] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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.

52. 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.[148] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by email, ARINQUIRIES@fcc.gov.

53. **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 Steve Kramer at {[ ]}.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[148] *See* 47 CFR § 1.1914.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Steve Kramer*, Forfeiture Order, File No.: EB-TCD-24-00036094 (September 26, 2024).

The future of our democracy is in the hands of those who vote. But in this election something new is emerging. It is now cheap and easy to use Artificial Intelligence to clone voices and flood us with fake sounds and images. By unlawfully appropriating the likeness of someone we know, this technology can illegally interfere with elections. We need to call it out when we see it and use every tool at our disposal to stop this fraud.

Earlier this year, thousands of people in New Hampshire received a robocall with a message from President Biden. Just days before the primary election in the state, he urged voters to sit this one out and save their vote for the general election. This was bunk. It was his voice, but not his words. This was not the first time we saw the use of this kind technology in a campaign. Last summer, the campaign of Governor DeSantis was flagged for circulating AI-altered images of former President Trump. Also not good. But what happened in New Hampshire involved a phone call—and that means this agency has a role.

We kicked into high gear at the Federal Communications Commission. We acted fast. We unanimously adopted a ruling that made clear that "artificial or prerecorded" robocalls using AI voice cloning technology violate the Telephone Consumer Protection Act. We partnered in this effort 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 sent a cease-and-desist letter and notified all other carriers to go ahead and stop carrying their traffic. Then we proposed a fine, with the carrier ultimately paying $1,000,000 and putting in place policies to stop these calls going forward. When we found the individual behind it—Steve Kramer—we proposed a $6,000,000 fine. It is this individual and this fine that we finalize here today.

Let me be very clear. If you flood our phones with this junk, we will find you and you will pay. And it is not just this agency you will need to worry about. The New Hampshire Attorney General is prosecuting Steve Kramer for voter suppression and impersonation of a candidate, and we are committed to assist our colleagues in the state every step of the way.

We are also committed to making clear that whenever this technology is used it must be disclosed. That is why we have proposed requiring callers and texters to make clear they are using AI-generated technology and to disclose the use of AI-generated voices at the start of a call. It is also why we have proposed to require local, state, and issue campaigns to disclose if they use AI technology in the advertisements they air on television and radio, building on disclosure practices we have had at this agency for decades. Because as these tools become more accessible, every one of us has a right to know if they are being used.

I want to close by sharing a statement from New Hampshire Attorney General John Formella that shows just how this work impacts our democracy:

"Secure, trustworthy, and transparent elections are the cornerstone of our democratic system at both the federal and state levels. It is imperative that our elections remain free from unlawful interference. The State of New Hampshire, working closely with the FCC, as well as our other federal and state partners, has demonstrated a unified commitment to protecting voters from harmful robocalls and voter suppression tactics. I firmly believe that the FCC's enforcement action today will send a strong deterrent signal to anyone who might consider interfering with elections, whether through the use of unlawful robocalls, artificial intelligence, or any other means.

Today's actions underscore our steadfast collective resolve to safeguarding and upholding the integrity of our electoral process. In New Hampshire, we unequivocally oppose any attempts to compromise our democracy, especially through the misuse of technology and will pursue all avenues of legal recourse against those who seek to undermine our democratic values. This substantial FCC fine, paired with ongoing legal efforts, sends a clear and resounding warning: voter suppression tactics will not be tolerated. We are grateful for the collaborative partnership with the FCC in this investigation. Together, we will ensure that our elections remain fair and transparent for all citizens."

Well said.

For this action today, I want to thank the staff from the Enforcement Bureau, Wireline Competition Bureau, Consumer and Governmental Affairs Bureau, the Office of General Counsel, and the Office of Economics and Analytics for their work.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *In the Matter of Steve Kramer,* Forfeiture Order, File No.: EB-TCD-24-00036094 (September 26, 2024).

Today, we adopt a Forfeiture Order that affirms the Notice of Apparent Liability imposing a $6,000,000 penalty on Mr. Steve Kramer for perpetrating an illegal robocall campaign in violation of our rules. With this action, we hold a bad actor accountable for harming consumers using robocalls.

After an investigation led by the Enforcement Bureau, we find that Kramer acted with the intent to defraud New Hampshire consumers. The Truth in Caller ID Act makes spoofing unlawful – that is to cause to transmit misleading or inaccurate caller identification information with the intent to defraud. Kramer enacted a plan to send thousands of spoofed robocalls targeting New Hampshire consumers. The message in those calls was created with Artificial Intelligence (AI) in an effort to imitate President Biden's voice instructing listeners to refrain from voting in the New Hampshire primary election.

Not only did Kramer's scheme violated our rules, but it also harnessed AI technology for harm. The consequences for consumers stemming from scams like the one Kramer perpetrated and the threat to our democratic processes warrant a strong response. That is why this forfeiture order is so important. In addition to enforcing our longstanding rules, the FCC must do what is within our power to deter scams manipulating new technologies to prey on consumers and threaten our democratic processes.

Thank you to the Enforcement Bureau and all staff at the FCC that contributed to this critical enforcement action.

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

In the Matter of	)	
	)	
Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems	)	MB Docket No. 22-405
	)	

FIRST REPORT AND ORDER

Adopted: September 24, 2024 **Released: September 25, 2024**

By the Commission:

I. INTRODUCTION

1. In this *First Report and Order* (*First R&O*), we adopt the proposals set forth in the *Order and Notice of Proposed Rulemaking* in this proceeding that pertain to digital FM station operation with asymmetric power on the digital sidebands.[1] This asymmetric sideband operation will allow stations to operate with different power levels on the upper and lower digital sidebands, as a way to facilitate greater digital FM radio coverage without interfering with adjacent-channel FM stations.[2]

2. In a 2022 Public Notice, the Media Bureau (Bureau) consolidated into one rulemaking proceeding two separate Petitions for Rulemaking, both proposing changes to the rules that the petitioners urged would improve digital FM signal quality and minimize the effect of the digital FM station signal on adjacent channel FM transmissions.[3] In the first petition, filed December 9, 2019, petitioners National Association of Broadcasters (NAB), Xperi Corporation (Xperi), and National Public Radio (NPR) (collectively Asymmetric Petitioners), requested blanket authorization to set digital power at different levels on each digital sideband, thus allowing a digital FM station to protect, for example, an analog FM station on a lower first-adjacent channel, while enabling an increase in digital power on the upper sideband where there is no adjacent analog FM station or a more distant adjacent station.[4] In the second petition, filed October 26, 2022, NAB and Xperi requested that the FCC update the methodology stations use to determine maximum FM digital power levels.[5] In the *NPRM*, the Commission granted these

[1] *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, Order and Notice of Proposed Rulemaking, 38 FCC Rcd 7158 (2023) (*NPRM*).

[2] The Commission noted in the *NPRM* that the Low Power FM service, the FM translator service, and the FM booster service are all eligible to operate in hybrid mode (i.e., broadcasters are allowed to transmit digitally on their existing channel assignments while simultaneously maintaining their analog service), in the same manner as the full-power FM service. *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rule Making, 22 FCC Rcd 10344, 10366-67, 10381-81, paras. 56-58, 92-93 (2007) (*DAB Second R&O*). In this *First R&O* any references to the "FM service" or "FM" include all of these discrete FM services, unless noted otherwise.

[3] *Media Bureau Seeks Comment on Petitions for Rulemaking Proposing Amendments to FM Broadcast Digital Radio Rules*, Public Notice, DA 22-1226 (MB Nov. 28, 2022) (*FM Digital Comment PN*).

[4] Petition for Rulemaking of Nat'l Ass'n of Broad., Xperi Corp., and Nat'l Public Radio, MB Docket No. 22-405 (filed Dec. 9, 2019), https://www.fcc.gov/ecfs/document/1125972022299/1 (Asymmetric Sideband Petition). *See Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Public Notice, Report No. 3140 (CGB Feb. 5, 2020).

[5] Petition for Rulemaking of Nat'l Ass'n of Broad. and Xperi Inc., MB Docket No. 22-405 (filed Oct. 26, 2022), https://www.fcc.gov/ecfs/document/10261669202264/1 (Power Methodology Petition). On Feb. 21, 2024, the Media Bureau released a Public Notice announcing the Feb. 2, 2024, filing of a "Petition for Rulemaking

(continued….)

petitions and sought comment on whether the rule changes proposed by the petitioners would serve the public interest, by providing FM digital stations with the ability to increase power and, concomitantly, increase coverage area, building penetration, and provide a more robust digital signal. The Commission additionally sought comment on: whether such rule changes would cause or increase interference to analog FM stations adjacent to a digital FM station; whether the proposed rule changes would have other adverse effects on incumbent FM stations; whether and to whom notice of increased digital FM power should be provided; and whether additional interference remediation procedures should be introduced.[6]

3. Broadcasters, engineers, and listeners filed comments and reply comments in response to the *NPRM*. Additionally, commenters such as the Aerospace Industries Association; Air Line Pilots Association, International; Garmin International, Inc.; and the General Aviation Manufacturers Association filed comments expressing concern about higher digital power levels at the upper end of the FM broadcast band causing interference to users in the adjacent Aeronautical Radio Navigation Spectrum (ARNS), from 108.0 – 117.95 MHz.[7] The commenters state that preliminary industry studies suggest that further testing is needed; to that end, aviation industry commenters are working with NAB and Xperi, but state that comprehensive testing will take additional time.[8] Accordingly, in the interest of a complete record, we defer action on the proposal relating to maximum FM digital power levels, and act only on the proposals relating to the Asymmetric Sideband Petition at this time, with appropriate safeguards for stations on Channels 296 - 300.

II. BACKGROUND

4. The FM digital radio system inserts redundant digital sidebands above and below a station's existing analog signal. The Commission's existing rules assume that digital power is the same on both digital sidebands, i.e., symmetric sideband operation.[9] Currently, an FM station that wishes to employ asymmetric sideband operation, using different power on each digital sideband, must apply for an experimental authorization and renew that authorization annually.[10] NAB, Xperi, and NPR, in the

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Addendum–Request for Clarification" by NAB and Xperi. *See Media Bureau Announces Filing of Petition for Clarification Concerning FM Digital Power NPRM and Opportunity for Supplemental Comments*, Public Notice, DA 24-154 (MB rel. Feb. 21, 2024) (*Clarification PN*). NAB and Xperi sought to clarify what they termed an ambiguity regarding the maximum proposed FM digital power levels, taking into account all digital transmission modes. The time period for filing comments and reply comments on the *Clarification PN* closed on April 15, 2024. *See Comment and Reply Comment Dates Set for Supplemental Comments*, Public Notice, DA 24-187 (MB rel. Feb. 29, 2024). Because the *Clarification PN* is concerned with digital power levels rather than asymmetric sideband operation, we do not address the issues raised in the *Clarification PN* in this order.

[6] *See*, *e.g.*, *NPRM*, 38 FCC Rcd at 7159, para. 2.

[7] *See*, *e.g.*, Comments of Gen'l Aviation Mfrs. Ass'n (GAMA September Comments) at 2 and Attachment A; Comments of Aerospace Indus. Ass'n (AIA September Comments) at 2. *See also* Letter from First Officer Chris Sidor, Air Line Pilots Ass'n, Int'l, *et al.*, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 3 (filed Sept. 19, 2024).

[8] Supplemental Comments of Air Line Pilots Ass'n, Int'l; Airlines for America; Aviation Spectrum Res., Inc.; The Boeing Co.; Garmin; and GAMA, filed Apr. 1, 2024, at 2-4. *See also* Letter from First Officer Chris Sidor, Air Line Pilots Ass'n, Int'l, *et al.*, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 3 (filed Sept. 19, 2024) (providing testing updates); Letter from Ashruf El-Dinary, Xperi Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405 (filed Sept. 23, 2024).

[9] *See Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, Order, 25 FCC Rcd 1182, 1190, para. 20 (MB 2010) (*2010 MB DAB Order*) (setting forth methodology for calculating maximum permissible FM Digital ERP that assumes operation with symmetric sidebands, pursuant to delegated authority).

[10] The request for experimental authorization must include a showing that the digital sideband signal contours will not overlap adjacent stations' protected contours.

Asymmetric Sideband Petition, assert that with asymmetric sidebands a digital FM station can limit the power of one digital sideband to protect the adjacent analog FM station on that side while concurrently increasing the power of the other sideband in order to expand its overall digital coverage and improve its building penetration.[11] The Asymmetric Petitioners conducted a study that they state demonstrates that many more digital FM stations could increase power on at least one sideband above the current limit of -14 dBc.[12] Out of 10,875 digital FM stations studied, petitioners contend that 6,120 could increase power on both sidebands to -10 dBc under the current rules,[13] whereas if asymmetric sidebands were allowed, an additional 3,496 stations could increase one sideband to -10 dBc, with another 532 being able to increase one sideband's power to between -14 and -10 dBc.[14] Asymmetric Petitioners also argue that the need to request experimental authorization, and the temporary nature of such authorizations, discourages use of asymmetric sidebands,[15] which in turn limits digital FM stations to the power level needed to protect the adjacent-channel analog FM station that is most susceptible to digital interference.[16] The Asymmetric Petitioners thus request that we amend our rules to allow FM stations to operate with asymmetric digital sidebands, without having to request experimental authorization to do so, in order to remove unnecessary regulatory barriers and promote broader adoption of terrestrial digital FM broadcasting.[17]

III. DISCUSSION

5. We conclude that the record contains considerable support for asymmetric sideband operation, and thus we adopt the relevant proposals set forth in the *NPRM*, with some modifications to the rules that were proposed.[18] We therefore authorize digital FM stations, except stations operating on Channels 296 - 300,[19] to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization, consistent with the requirements set forth herein. As further discussed below, a digital FM station need only notify us of asymmetric sideband operation by filing notification on Form 2100, Schedule 335-FM – FM Digital Notification (Schedule 335-FM) in the Bureau's Licensing and Management System (LMS) database.

6. *Asymmetric Sideband Operation Authorization*. We agree with the commenters and find that asymmetric sidebands will promote the adoption of digital radio without increasing the risk of interference to existing analog broadcasts. Those commenters that addressed this proposal generally support it. Some express approval of the proposal as being an affirmative step toward broader adoption of

[11] Asymmetric Sideband Petition at 8-9. Similarly, a station could reduce power on the sideband causing interference to another station and maintain the desired power level on the other digital sideband. *See NPRM*, 38 FCC Rcd at 7169, para. 26.

[12] Pursuant to the *2010 MB DAB Order*, most FM stations are allowed to operate with digital power up to -14 dBc without the need for additional authorization. *See 2010 MB DAB Order*, 25 FCC Rcd at 1189, para. 16.

[13] Pursuant to the *2010 MB DAB Order,* certain FM stations also are allowed to increase digital power above -14 dBc, to up to -10 dBc, upon a showing that such power increase would comply with the formula in the *Order*, and therefore would not cause harmful interference to adjacent-channel analog FM stations. *See 2010 MB DAB Order*, 25 FCC Rcd at 1189-90, paras. 16-20.

[14] Asymmetric Sideband Petition at 9-11. Petitioners' study was conducted in 2017.

[15] *Id*. at 11.

[16] *Id*. at 8-10.

[17] *Id*. at 8-11.

[18] In addition, as proposed in the *NPRM*, 38 FCC Rcd 7158, n.65, to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register, we add paragraph numbers to the list of definitions in 47 CFR §§ 73.310(a) and (b). *See* Appendix B. The definitions restated in Appendix B are identical to the current definitions.

[19] *See infra* note 26.

digital radio,[20] with some specifically stating that eliminating the need for prior experimental authorization will encourage more stations to adopt FM digital operation.[21] Many commenters opine that asymmetric operation will reduce interference to adjacent-channel analog FM stations, with some offering anecdotal or experimental evidence to support these claims.[22] For example, three of the joint NCE commenters report that they have operated for several years under experimental asymmetric sideband operation authority, "without any interference issues at all," and further that the University of Central Florida's WUCF-FM, after five years of such operation, commissioned a study as part of its license renewal showing "significant HD reception benefits to the public from its asymmetrical sideband operations."[23] Our current policy requiring the same power on both the upper and lower digital sidebands limits an FM station's digital power to that needed to protect the adjacent-channel analog FM station most susceptible to interference, regardless of whether there is a need to limit power on the other sideband.[24] Asymmetric Petitioners contend, and commenters agree, that allowing calculation of the maximum allowable digital FM power on a per-sideband basis allows such stations to optimize their digital signal coverage while still protecting analog FM stations on adjacent channels.[25] We agree and, based on the record presented, we find that it is in the public interest to allow asymmetric sideband operation, except on Channels 296 - 300, without the need for an experimental authorization.[26]

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[20] *See*, *e.g.*, Comments of CMG Media Corp. (CMG September Comments) at 2-3; Comments of Nat'l Pub. Radio (NPR September Comments) at 2-3; Comments of Press Commc'ns, LLC (Press September Comments) at 2 (favoring asymmetric operation if it is used to protect Class A FM stations from new or additional digital interference); Comments of N.Y. Public Radio (NYPR September Comments) at 4 (only filing Form 2100 Schedule 335-FM should be required to implement asymmetric sideband operation).

[21] Comments of Xperi, Inc. and Nat'l Ass'n of Broad. (Xperi/NAB September Comments) at 7-8; Comments of Audacy, Inc., Beasley Media Group, LLC, Connecticut Public Broad., Inc., Davis Broad. of Atlanta, L.L.C., Davis Broad., Inc., of Columbus, Galaxy Syracuse Licensee LLC, Galaxy Utica Licensee LLC, and Spanish Broad. System, Inc. (Commercial Broadcasters Joint September Comments) at 7-8. *See also* Comments of Educational Media Found. (EMF September Comments) at 7 (not requiring prior authorization for asymmetric sideband operation removes a barrier to entry keeping stations from implementing FM digital operations).

[22] *See*, *e.g.*, Com. Broad. Joint September Comments at 4-6; Comments of Ariz. Bd. of Regents for Benefit of Univ. of Ariz., Bd. of Regents of the Univ. of Wis. Sys., Elkhart Cmty. Schools, Fla. Gulf Coast University, Ga. Public Telecommunications Comm'n, The Ohio State Univ., State of Wis. Educ. Commc'ns Bd., Univ. of Central Fla., and Univ. of North Tex. (NCE Broadcasters Joint September Comments) at 3; Reply of National Ass'n of Broad. (NAB October Reply) at 17-18; Comments of REC Networks (REC September Comments) at 12. *See also* Reply of Goldman Engineering Mgmt. (GEM Reply) at 3 (agreeing that all stations should be allowed to use asymmetric sideband operation on a notification basis if they are otherwise unable to reduce interference to other stations). We note that we have not received any interference complaints during the many years of granting experimental authorizations to stations employing asymmetric sideband operation.

[23] NCE Broadcasters Joint September Comments at 3.

[24] Asymmetric Sideband Petition at 9. *See supra* note 11.

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

[26] *See* Letter from First Officer Chris Sidor, Air Line Pilots Ass'n, Int'l, *et al.*, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 3 (filed Sept. 19, 2024). In this *ex parte* letter, aviation industry commenters not only request that we expand to four channels the FM broadcast station frequencies required to request experimental authorization for asymmetric sideband operation, but also continue to express concerns regarding the effect the new digital power increase methodology could have on ARNS users. *Id*. at 3-5. Xperi filed a Response to this *ex parte* letter on September 23, 2024. Letter from Ashruf El-Dinary, Xperi Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405 (Xperi Response). In the Xperi Response, Xperi supports the aviation industry commenters' suggestion to temporarily expand the channels for which the use of asymmetric sideband power is not authorized by default to include channels 296 through 300, "because it is important to provide a streamlined path for as many stations as possible to utilize asymmetric sideband power…." Xperi Response at 1-2. Because the aviation industry commenters are working with Xperi and NAB to determine what, if any, effect the *NPRM* proposals concerning the

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7. *Notice*. We further find that allowing a digital FM station to report its asymmetric sideband operation through a simple notification removes a regulatory barrier, compared to the current procedure of applying for an experimental license to operate asymmetrically, and having to file for annual renewals of that authorization. At the same time, we believe it is important for the Commission to track asymmetric operation in order to address any potential interference problems that may arise and to allow stations to identify if their adjacent-channel stations are using asymmetric sidebands. We find that a simple notification should provide the correct balance between our desire to streamline the regulatory burden on stations adopting asymmetric operations and our need to be able to identify stations employing this functionality.[27] We also note this is consistent with the approach we take for initial authorization of digital broadcasting. FM broadcast licensees have never needed to file a separate application for authorization to initiate hybrid digital operation; all that has been required is notification to the Commission.[28] We find the public interest would be similarly served by declining to require a separate application to initiate asymmetric sideband operation and allow stations to commence asymmetric sideband operation based on a simple notification.

8. To provide notification to the Commission, stations choosing asymmetric sideband operation will be required to file a revised Schedule 335-FM. The filing of Schedule 335-FM with the Commission does not trigger the release of a separate Public Notice in LMS, but like all LMS forms is searchable and thus available to members of the public using the LMS "Search" function.[29] We conclude this approach will provide the public with real time information on which stations have adopted asymmetric operations.[30]

9. Some commenters seek further modification to the proposal regarding notice of asymmetric band operation. Cumulus advocates for the Commission to "maintain a readily accessible record of information" on every station increasing power, suggesting that this would include stations employing asymmetric sideband operation.[31] It argues that listeners may find it difficult to identify digital-to-analog FM interference, and that such a public record of stations altering their digital power

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formula for determining maximum digital power could have on users in the ARNS, and given Xperi's lack of objection, we will continue to require experimental authorization for any digital FM radio station seeking asymmetric sideband operation on Channels 296 - 300 (107.1 - 107.9 MHz). This will impact relatively few digital FM stations, and will ensure there is no change to the current relationship between digital operations on the upper four channels of the FM broadcast band and aeronautical users at 108 MHz and above. Based on any additional information we receive from the aviation industry, Xperi, and NAB concerning their investigations into the impact of digital radio operation on users in the ARNS, we may reconsider this requirement at a future date.

[27] Our need to track stations employing asymmetric sideband operation includes identifying those stations that discontinue such operation. We therefore similarly require that stations permanently terminating asymmetric sideband operation notify the Commission of such termination on Schedule 335-FM. *See infra* para. 13; Appendix B.

[28] 47 CFR § 73.406. *See also Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, First Report and Order, 17 FCC Rcd 19990, 20005-06, paras. 42-43 (2002) (*DAB R&O*).

[29] https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicSearchLanding.html.

[30] The majority of comments on this "notice" issue was linked to the Power Methodology Petition, thus we defer consideration of those comments until the time we address the issue of digital power levels. *See supra* note 5. Given that asymmetric sideband operation will primarily be used to reduce power in the direction of the susceptible adjacent-channel analog FM station, increasing power only in the direction of the other analog station(s), we do not find any need for enhanced notice procedures at this time. *NPRM*, 38 FCC Rcd at 7171, para. 29 ("We observe that asymmetric sideband operation *per se* should not cause an increase in interference or complaints thereof, as stations employing such operation are already protecting the closer of the adjacent stations to their sideband frequencies, and the only power increases should be toward adjacent channel stations that are more distant, either physically or by frequency").

[31] Comments of Cumulus Media, Inc. (Cumulus September Comments) at 5-6.

profile would assist in identifying interfering stations.[32] Similarly, iHeartCommunications, Inc. (IHC) believes that Schedule 335-FM should be modified to allow the notifying station to provide the effective radiated power (ERP) of the digital signal on both the upper and lower digital sidebands, as well as the total digital ERP.[33] However, IHC disagrees with the *NPRM*'s proposal to modify section 73.406(d)(7)-(8) of our rules to require licensees to file Schedule 335-FM with a short statement of the reason(s) for discontinuing digital operation, including a return to symmetric sideband operation from asymmetric operation.[34] It believes that specifying a reason is unnecessary because such operations "are not mandatory, are a voluntary business choice of the individual station, and the decision may be competitively sensitive."[35]

10. We concur with commenter IHC that Schedule 335-FM should be modified to require a party giving notification of asymmetric sideband operation to indicate the digital ERP on both upper and lower digital sidebands, as well as the total digital ERP. We believe that requiring these data to be included in Schedule 335-FM should suffice to advise broadcasters and the public, through LMS, about digital operations. Thus, we find it unnecessary to adopt Cumulus's suggestion that we implement a separate database of FM stations broadcasting in hybrid digital mode and the per-sideband digital power of such stations.[36] We concur with IHC's objection to the proposed requirement of providing a reason for discontinuation, and agree it is unnecessary given the voluntary nature of asymmetric sideband operation. We thus adopt the tentative conclusion that Schedule 335-FM notification should be required for any digital FM station that reverts to symmetric sideband operation from asymmetric sideband operation, but will not adopt the proposal to require any such notification of return to symmetric sideband operation to be accompanied by a short statement of the reason(s) for this action.

11. *Reporting on Schedule 335-FM*. After the effective date of the rules adopted in this *First R&O*, licensees will be required to use Schedule 335-FM to provide notice to the Commission. This will serve as a replacement for many of the current requests for experimental authorization and informal requests. As noted above, licensees will be required to use Schedule 335-FM to notify the Commission of the commencement or discontinuance of asymmetric sideband operation as a replacement for requests for experimental authorization. A station adopting asymmetric sideband operation must notify the Commission upon commencement of such operation by filing Schedule 335-FM. We direct the Bureau to inform the digital FM station within 30 days of filing Schedule 335-FM if its asymmetric sideband operation is non-rule compliant. The station may commence asymmetric sideband operation upon submitting Schedule 335-FM and may continue such operation unless it receives notice of noncompliance during that 30-day period. Similarly, a digital FM station must notify the Bureau on Schedule 335-FM within 30 days of discontinuing asymmetric sideband operation.

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

[33] Comments of iHeartCommc'ns, Inc. (IHC September Comments) at 12.

[34] *Id*. It is not entirely clear whether IHC seeks to eliminate this language with regard to both a reduction in digital power and a return to symmetric from asymmetric sideband operation, or merely the former scenario. Because IHC characterizes its suggestion as a modification to Form 2100 Schedule 335-FM, which is used for both types of notification scenarios, we interpret this as a request to remove the explanatory language with regard to both types of operational change, i.e., from both proposed paragraphs (d)(7) and (d)(8).

[35] IHC September Comments at 12.

[36] REC identifies what it characterizes as "substantial shortcomings" in the LMS data, including the lack of a data field identifying stations operating in hybrid digital mode. REC September Comments at 13. Further, CTI, in its Reply, expresses concern regarding the accessibility of Schedule 335-FM data in LMS, and suggests that we require each station to upload any Schedule 335-FM filings to its Online Public Inspection File (OPIF). CTI Reply at 2. *See also* IHC Reply at 11-13 (encouraging "the development of, and to fortify the accessibility to, user-friendly tools for [the Bureau's] databases," and specifically requesting that we "implement a readily accessible, centralized record containing information on stations that have increased digital power under the revised rules."). We recognize the concerns raised by these comments, but find them to be beyond the scope of the current proceeding.

12. We also make an administrative change to the procedures used by licensees seeking to increase digital power above - 14 dBc. Those requests, previously submitted by informal request, will be submitted using Schedule 335-FM.[37] This minor administrative change will help streamline processing of these requests and will further the Commission's efforts to transition all broadcast filings to the Bureau's Licensing and Management System (LMS).

13. The *2010 MB DAB Order* increased the allowable total power level of an FM station's digital sidebands from the previous maximum of -20 dBc to -14 dBc.[38] The same order allowed FM stations, except for grandfathered superpowered stations, to seek additional authorization to increase total digital power above -14 dBc, up to -10 dBc, through an informal request including a showing that such power increase would comply with the formula set forth in the *2010 MB DAB Order*, and therefore would not cause harmful interference to adjacent analog FM stations.[39] As noted, in this *First R&O* we are not revising the formula that determines the maximum permissible digital power a station may use. However, for purposes of administrative efficiency, we modify the current informal process used to request an increase in total digital power above -14 dBc. After the effective date of the rules adopted in this *First R&O*, digital FM stations must use Schedule 335-FM to request an increase in total digital ERP above -14 dBc, using Table 1 to § 73.404(f) adopted herein,[40] and will also report certain digital power decreases on Schedule 335-FM.[41] After the effective date of this order, a digital FM station will report the following actions (or request authority in the case of an increase of total digital ERP above -14 dBc) by submitting

[37] The *2010 MB DAB Order* states that "we will require a licensee to submit an application to the Bureau, in the form of an informal request, for any increase in FM Digital ERP" beyond -14 dBc. *2010 MB DAB Order*, 25 FCC Rcd at 1189, para. 19. This informal request typically comes in the form of a letter to the Commission.

[38] *2010 MB DAB Order*, 25 FCC Rcd at 1189, para. 16. The -14 dBc power level is for both FM digital sidebands combined; when both sidebands are operating at the same power level, each sideband would operate at -17 dBc, or 3 dB lower than the combined symmetrical digital sideband power, representing one-half of the total allowed digital ERP for each sideband.

[39] *Id.* at 1182, 1189-90, paras 16-20. *See also* 47 CFR §73.404(a). The showing required to obtain FM digital power of between -14 dBc and -10 dBc included the calculation results using the following formula: Allowable FM digital power = [2.27 * (60 – (FM digital station F(50,10) dBμ)) – 33.6]. Thus, a licensee desiring FM digital ERP in excess of -14 dBc total power is required to calculate the digital station's analog F(50,10) field strength at all points on the protected 60 dBμ F(50,50) contour of a potentially affected first-adjacent-channel analog FM station. This calculation must be performed using each station's licensed analog facilities and the standard FCC contour prediction methodology. *2010 MB DAB Order,* 25 FCC Rcd at 1187, 1190, paras. 12, 20.

[40] *See infra* para. 15. Table 1 is based on the table set forth in the *2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20, adapted for use on a per-sideband basis. Certifications of compliance with Table 1 to new 47 CFR § 73.404(f) must be based on the most restrictive analog field strength of the proponent at any nearby first-adjacent-channel station's 60 dBμ contour. *See 2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20. Although the Table has been modified, the information submitted by the station is the same as it is currently.

[41] As discussed in paragraphs 12-13 herein, licensees will use Schedule 335-FM to provide the Commission with all notifications relating to digital operations. As part of that notification, an FM station initiating operation with total digital power in excess of -14 dBc will also be required to certify that the proposed FM digital power is permitted for each digital sideband. Licensees must use the table set forth in revised section 73.404(f) of our rules, 47 CFR § 73.404(f), which we also adopt herein. *See infra* paragraph 15; Appendix B. Licensees will provide this new per-sideband certification on Schedule 335-FM in addition to the certification that it intends to operate with total digital ERP between -14 dBc and -10 dBc. *See* paragraph 13. The licensee shall also attach to Schedule 335-FM an exhibit, which must include a plot of the relevant most restrictive interfering contour(s) of the digital station and the protected contour(s) of the most restrictive upper/lower first-adjacent-channel station(s).

Schedule 335-FM:[42] the initiation of hybrid digital operation; the initiation of asymmetric sideband operation at any power level, as well as the discontinuance of asymmetric sideband operation; an increase of total digital ERP above -14 dBc; or a decrease in total digital ERP from a level above -14 dBc to a level at or below -14 dBc.[43] A station choosing to operate with total digital ERP between -14 dBc and -10 dBc must still attach to its Schedule 335-FM submission an exhibit demonstrating that the proposed FM digital ERP is permitted for each digital sideband,[44] using Table 1 to § 73.404(f), adopted herein.[45] As is the case with the current informal request process, a digital FM station choosing to operate with total digital ERP above -14 dBc may initiate such operation upon approval from the Commission.

14. *Changes to "per-sideband" table*. Although proponents/commenters Xperi and NAB support the Asymmetric Sideband Petition they co-authored with NPR, they have identified shortcomings in the tables presented in the *NPRM* to determine the maximum allowable ERP of each digital sideband. Xperi and NAB point out that total sideband power is necessarily calculated on a per-sideband basis, computing lower and upper digital sideband power by calculating the field strength of the digital FM station's F(50, 10) contour at its overlap with the 60 dBμ F(50, 50) contour of, respectively, the lower and upper first-adjacent analog stations. The proponents contend that the tables in paragraphs 9 and 26 of the *NPRM* are mis-labeled and thus are incorrect, as are their counterparts in Appendix A to the *NPRM*, the then-proposed new tables to section 73.404, paragraphs (e) and (f).[46] In their comments, they submitted corrected tables as well as corrections to the proposed rule change to section 73.404.[47]

15. We agree with Xperi and NAB to the extent that the column headings of the Tables in the *NPRM* were mis-labeled, and further agree that the maximum permissible FM digital ERP is better displayed on a per-sideband basis, as the combination of the sideband ERPs adds up to the full digital ERP. The Asymmetric Petitioners proposed a per-sideband table, but their proposed table was calculated based upon adoption of the proposals in the *NPRM* to update the methodology used to determine maximum FM digital power. As no commenters objected to the use of a per-sideband table, and as we are not adopting at this time the proposals to update the methodology for determining FM digital power levels, we have modified and adopted Xperi and NAB's corrected "Maximum permissible FM digital ERP per-sideband" table to comport with the current limits on FM digital ERP, as follows:[48]

[42] While recognizing that this is not specifically within the scope of this proceeding, REC expresses a belief in the need to "implement a readily accessible, centralized record containing information on stations that have increased digital power under the revised rules." REC September Comments at 14 n.27. *See also supra* note 36. While acknowledging REC's and other commenters' desire for accurate station data, we agree with REC that such an undertaking is beyond the scope of the current proceeding.

[43] In other words, an FM digital station not currently operating with total digital ERP above -14 dBc need not report further digital power reductions.

[44] *2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20.

[45] *See infra*, Appendix B.

[46] Xperi/NAB September Comments at Appendix 1, 1-5.

[47] *Id*. at Appendix 1, 2-5.

[48] *See also infra* Appendix B. The proposed modification to section 73.404(f) in the *NPRM* also noted the need for an adjustment to account for the difference between asymmetric and symmetric operation. *NPRM*, 38 FCC Rcd at 7169, para. 26. Because our final rules only reflect power for each sideband, no adjustment is needed.

IBOC Station's F(50,10) Field Strength at the Upper or Lower First-Adjacent Station's Analog 60 dBμ F(50,50) Contour	Maximum Permissible FM Digital ERP for the Respective (Upper or Lower) Sideband
51.2 dBμ and above	-17 dBc
50.7 dBμ to 51.1 dBμ	-16 dBc
50.3 dBμ to 50.6 dBμ	-15 dBc
49.6 dBμ to 50.2 dBμ	-14 dBc
49.5 dBμ or less	-13 dBc

If, in a subsequent Order, we modify the formula used to determine the maximum permissible digital power level, we will adjust this table at that time.

16. *Interference Mitigation and Remediation*. We find that the interference mitigation and remediation procedures set forth in the *2010 MB DAB Order* are sufficient to remedy any reports of inter-station interference as a result of asymmetric sideband operation, given that reduction of power on one sideband necessarily reduces the potential for interference and therefore makes such interference less likely. As before, we reserve further consideration of modified interference mitigation and remediation procedures in the FM digital power increase context.[49]

17. *Pending Proceedings*. We adopt the proposal that any licensees with asymmetric sideband operation under experimental authorizations that are compliant with the rules adopted in this *First R&O* may file Schedule 335-FM notification at any time after the effective date of the rules adopted in this *First R&O* and before the existing experimental authority expires.[50] EMF agrees, asserting that permitting such stations to transition to asymmetric sideband operation by filing Schedule 335-FM notification represents an efficient use of both broadcasters' and the Commission's resources, and is in the public interest as it would incentivize the rapid deployment of HD Radio.[51] No commenter opposes this proposal. However, there appears to be no reason to limit FM digital stations under experimental authorization to a 30-day window in which to transition to asymmetric sideband operation. Therefore, after the rules adopted in this *First R&O* take effect and the changes to Schedule 335-FM are approved by the Office of Management and Budget and there is an announcement of such approval published in the *Federal Register*, any station currently employing asymmetric sideband operation under experimental authorization that is compliant with the rules adopted in this *First R&O* may transition to non-experimental asymmetric sideband operation by notifying the Commission through Schedule 335-FM at any time prior to expiration of the experimental authorization. Although we do not require that stations currently operating with power greater than -14 dBc under existing special temporary authorization file Schedule 335-FM, we encourage such stations to update their records in LMS using Schedule 335-FM in order that their sideband power levels are properly reflected in LMS. Any station seeking a power increase above -14 dBc in the future must request authority to do so using Schedule 335-FM.

18. *Digital Equity and Inclusion*. As part of the Commission's continuing effort to advance digital equity for all,[52] including people of color, persons with disabilities, persons who live in rural or

[49] We acknowledge that several commenters raise interference concerns in the power increase context. *See*, *e.g.*, Santiam Comm. Radio Corp. Comments at 1; GEM Reply at 3-4; Cumulus September Comments at 4-5. We anticipate addressing such concerns in a future *Report and Order* in this proceeding.

[50] *NPRM*, 38 FCC Rcd at 7171, para. 30.

[51] EMF September Comments at 8.

[52] 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.

Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, the *NPRM* invited comment on any equity-related considerations[53] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission sought comment on how the proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.[54]

19. Commenter IHC provides a listing of programming aimed at underserved and minority audiences that is broadcast over digital channels, including programming for audiences in Spanish and Hmong.[55] It states that its experience "has proven that FM Digital has expanded the opportunities for free, over-the-air programming for diverse and inclusive communities," and that the more streamlined and robust FM digital programming becomes, "the more broadcasters will invest in FM Digital, and the greater will be the opportunities for service to, and by, diverse and inclusive communities."[56] Likewise, commenter NYPR lists programming designed to serve underserved communities, some of which is digital-only, and states that adoption of the *NPRM* proposals will help to bring such programs to larger audiences.[57]

IV. PROCEDURAL MATTERS

20. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[58] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[59] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *First R&O*. The FRFA is set forth in Appendix C.

21. *Final Paperwork Reduction Act of 1995 Analysis*. This *First R&O* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[60] All such new or modified information collections will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.[61] OMB, the general public, and other Federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief

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[53] 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).

[54] *NPRM*, 38 FCC Rcd at 7171-72, para. 31.

[55] IHC September Comments at 12-14 and Attachment A.

[56] *Id*. at 14.

[57] NYPR September Comments at 4-5 and Attachments 1-2.

[58] 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[59] 5 U.S.C. § 605(b).

[60] Pub. L. No. 104-13, 109 Stat 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[61] 44 U.S.C. § 3507(d).

Act of 2002,[62] the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In Appendix C, we have assessed the effects of the required collection of information on these small entities.

22. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *First R&O* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

23. *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).

24. *Additional Information*. For additional information on this proceeding, contact Thomas Nessinger, Media Bureau, Audio Division, at (202) 418-2709 or Thomas.Nessinger@fcc.gov; or James Bradshaw, Media Bureau, Audio Division, at (202) 418-2739 or James.Bradshaw@fcc.gov.

V. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 the foregoing *First Report and Order* **IS ADOPTED**, and the Commission's rules are hereby **AMENDED** as set forth in Appendix B.

26. **IT IS FURTHER ORDERED** that the *First Report and Order* and the amendments to the Commission's rules **SHALL BE EFFECTIVE** 30 days after publication of a summary in the Federal Register, except that the amendments to sections 73.404 and 73.406, which may contain new or modified information collection requirements, will not become effective until OMB completes review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the effective date of the rule changes to sections 73.404 and 73.406 by subsequent Public Notice.

27. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance and Program Management, **SHALL SEND** a copy of the *First Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

28. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this *First 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

[62] Pub. L. No. 107-198, 116 Stat 729 (2002) (codified at 44 U.S.C. § 3506(c)(4)).

APPENDIX A

List of Commenters

Comments

Aerospace Industries Association

Air Line Pilots Association, International

Audacy, Inc.; Beasley Media Group, LLC; Connecticut Public Broadcasting, Inc.; Davis Broadcasting of Atlanta, L.L.C.; Davis Broadcasting, Inc., of Columbus; Galaxy Syracuse Licensee LLC; Galaxy Utica Licensee LLC; Spanish Broadcasting System, Inc.

CMG Media Corporation

Cohen, Dippell and Everist, P.C.

Communications Technologies

Cumulus Media, Inc.

Douglas Sedon

Dwight Price

E. Glynn Walden

Educational Media Foundation

Garmin International, Inc.

General Aviation Manufacturers Association

iHeartCommunications, Inc.

Ira Petry II

John Heubel

John Joseph Nangle

Maciej Kawalkowski

Michael Ravnitzky

Mt. Wilson FM Broadcasters, Inc.

National Public Radio

New York Public Radio

Paul Cullings

Press Communications, LLC

REC Networks

Rick Price, Pamela Price

Santiam Community Radio Corp.

Scott Atkinson

Tom Potter

Arizona Board of Regents for Benefit of University of Arizona; Board of Regents of the University of Wisconsin System; Elkhart Community Schools; Florida Gulf Coast University; Georgia Public

Telecommunications Commission; The Ohio State University; State of Wisconsin Educational Communications Board; University of Central Florida; University of North Texas

University of Southern California

Xperi, Inc. and National Association of Broadcasters

Reply Comments

Aerospace Industries Association; General Aviation Manufacturers Association; National Association of Broadcasters

Communications Technologies

Robert Fitzgerald

Garmin International, Inc.

Goldman Engineering Management

iHeartCommunications, Inc.

National Association of Broadcasters

Press Communications, LLC

REC Networks

Xperi, Inc.

APPENDIX B

Final Rule Changes

For the reasons discussed in this preamble, the Federal Communications Commission amends 47 CFR part 73 to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. In § 73.310 revise paragraphs (a) and (b) to read as follows:

§ 73.310 FM technical definitions.

(a) Frequency modulation. The following definitions pertain to frequency modulation, as defined in § 73.310(a)(17).

(1) *Antenna height above average terrain (HAAT).* HAAT is calculated by: determining the average of the antenna heights above the terrain from 3 to 16 kilometers (2 to 10 miles) from the antenna for the eight directions evenly spaced for each 45° of azimuth starting with True North (a different antenna height will be determined in each direction from the antenna): and computing the average of these separate heights. In some cases less than eight directions may be used. (*See* § 73.313(d).) Where circular or elliptical polarization is used, the antenna height above average terrain must be based upon the height of the radiation of the antenna that transmits the horizontal component of radiation.

(2) Antenna power gain. The square of the ratio of the root-mean-square (RMS) free space field strength produced at 1 kilometer in the horizontal plane in millivolts per meter for 1 kW antenna input power to 221.4 mV/m. This ratio is expressed in decibels (dB). If specified for a particular direction, antenna power gain is based on that field strength in the direction only.

(3) Auxiliary facility. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

(4) Center frequency. The term "center frequency" means:

(i) The average frequency of the emitted wave when modulated by a sinusoidal signal.

(ii) The frequency of the emitted wave without modulation.

(5) Composite antenna pattern. The composite antenna pattern is a relative field horizontal plane pattern for 360 degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

(6) Composite baseband signal. A signal which is composed of all program and other communications signals that frequency modulates the FM carrier.

(7) Effective radiated power. The term "effective radiated power" means the product of the antenna power (transmitter output power less transmission line loss) times:

(i) The antenna power gain, or

(ii) the antenna field gain squared. Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontal and vertical components of radiation. For allocation purposes, the effective radiated power authorized is the horizontally polarized component of radiation only.

(8) Equivalent isotropically radiated power (EIRP). The term "equivalent isotropically radiated power (also known as "effective radiated power above isotropic) means the product of the antenna input power and the antenna gain in a given direction relative to an isotropic antenna.

(9) FM Blanketing. Blanketing is that form of interference to the reception of other broadcast stations which is caused by the presence of an FM broadcast signal of 115 dBμ (562 mV/m) or greater signal strength in the area adjacent to the antenna of the transmitting station. The 115 dBμ contour is referred to as the blanketing contour and the area within this contour is referred to as the blanketing area.

(10) FM broadcast band. The band of frequencies extending from 88 to 108 MHz, which includes those assigned to noncommercial educational broadcasting.

(11) FM broadcast channel. A band of frequencies 200 kHz wide and designated by its center frequency. Channels for FM broadcast stations begin at 88.1 MHz and continue in successive steps of 200 kHz to and including 107.9 MHz.

(12) FM broadcast station. A station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.

(13) Field strength. The electric field strength in the horizontal plane.

(14) Free space field strength. The field strength that would exist at a point in the absence of waves reflected from the earth or other reflecting objects.

(15) Frequency departure. The amount of variation of a carrier frequency or center frequency from its assigned value.

(16) Frequency deviation. The peak difference between modulated wave and the carrier frequency.

(17) Frequency modulation. A system of modulation where the instantaneous radio frequency varies in proportion to the instantaneous amplitude of the modulating signal (amplitude of modulating signal to be measured after pre-emphasis, if used) and the instantaneous radio frequency is independent of the frequency of the modulating signal.

(18) Frequency swing. The peak difference between the maximum and the minimum values of the instantaneous frequency of the carrier wave during modulation.

(19) Multiplex transmission. The term "multiplex transmission" means the simultaneous transmission of two or more signals within a single channel. Multiplex transmission as applied to FM broadcast stations means the transmission of facsimile or other signals in addition to the regular broadcast signals.

(20) Percentage modulation. The ratio of the actual frequency deviation to the frequency deviation defined as 100% modulation, expressed in percentage. For FM broadcast stations, a frequency deviation of ±75kHz is defined as 100% modulation.

(b) *Stereophonic sound broadcasting.* The following definitions pertain to *stereophonic sound broadcasting, as defined in § 73.310(b)(8).*

(1) *Cross-talk.* An undesired signal occurring in one channel caused by an electrical signal in another channel.

(2) FM stereophonic broadcast. The transmission of a stereophonic program by a single FM broadcast station utilizing the main channel and a stereophonic subchannel.

(3) Left (or right) signal. The electrical output of a microphone or combination of microphones placed so as to convey the intensity, time, and location of sounds originating predominately to the listener's left (or right) of the center of the performing area.

(4) Left (or right) stereophonic channel. The left (or right) signal as electrically reproduced in reception of FM stereophonic broadcasts.

(5) Main channel. The band of frequencies from 50 to 15,000 Hz which frequency-modulate the main carrier.

(6) Pilot subcarrier. A subcarrier that serves as a control signal for use in the reception of FM stereophonic sound broadcasts.

(7) Stereophonic separation. The ratio of the electrical signal caused in sound channel A to the signal caused in sound channel B by the transmission of only a channel B signal. Channels A and B may be any two channels of a stereophonic sound broadcast transmission system.

(8) Stereophonic sound. The audio information carried by plurality of channels arranged to afford the listener a sense of the spatial distribution of sound sources. Stereophonic sound broadcasting includes, but is not limited to, biphonic (two channel), triphonic (three channel) and quadrophonic (four channel) program services.

(9) Stereophonic sound subcarrier. A subcarrier within the FM broadcast baseband used for transmitting signals for stereophonic sound reception of the main broadcast program service.

(10) Stereophonic sound subchannel. The band of frequencies from 23 kHz to 99 kHz containing sound subcarriers and their associated sidebands.

* * * * *

3. In § 73.402 add paragraph (i) to read as follows:

§ 73.402 Definitions.

* * * * *

(i) *Asymmetric sideband operation*. For digital FM stations, the use of different power levels on the upper and lower digital sidebands in a hybrid or extended hybrid DAB system.

4. In § 73.404 add paragraphs (e) and (f) to read as follows:

§73.404 IBOC DAB operation.

* * * * *

(e) Except stations operating on Channels 296 - 300 (107.1 - 107.9 MHz), FM stations may transmit hybrid IBOC signals with asymmetric power on the digital sidebands, as defined in § 73.402(i). Stations operating on Channels 296 - 300 (107.1 - 107.9 MHz) may seek an experimental authorization to transmit hybrid IBOC signals with asymmetric power on the digital sidebands.

(f) All FM stations transmitting hybrid IBOC signals may operate with total digital effective radiated power of up to -14 dBc. No station may operate its digital carriers with a total effective radiated power in excess of -10 dBc. A station planning to operate with a total digital effective radiated power in excess of -14 dBc must certify compliance with the Table below by calculating the F(50,10) signal strength of its analog signal at the first adjacent station's F(50,50) 60 dBμ contour. Compliance with this Table must be established for the upper and lower IBOC digital sidebands separately. All calculations must be made using the standard FCC contour prediction methodology.

Table 1 to Paragraph (f)—Maximum Permissible FM Digital ERP per Sideband

IBOC Station's F(50,10) Field Strength at the Upper or Lower First-Adjacent Station's Analog 60 dBμ F(50,50) Contour	Maximum Permissible FM Digital ERP for the Respective (Upper or Lower) Sideband
51.2 dBμ and above	-17 dBc
50.7 dBμ to 51.1 dBμ	-16 dBc
50.3 dBμ to 50.6 dBμ	-15 dBc
49.6 dBμ to 50.2 dBμ	-14 dBc
49.5 dBμ or less	-13 dBc

5. In § 73.406 add paragraphs (d)(5) and (d)(6), to read as follows:

§73.406 Notification.

* * * * *

(d) * * *

(5) Any digital FM station taking any of the following actions must notify the Commission of such action on Form 2100, Schedule 335-FM:

(i) Upon initiation of hybrid digital operation;

(ii) Upon initiation of asymmetric sideband operation at any power level. For FM stations employing asymmetric sideband operation as defined in § 73.402(i), the notification must include a certification that the proposed digital sideband power on each sideband conforms to the Maximum Permissible FM Digital ERP set forth in Table 1 to § 73.404(f), and that the total digital sideband power will not exceed the total power if the digital sideband operation were symmetric. The notifying station may commence asymmetric sideband operation upon filing Form 2100, Schedule 335-FM, and may continue such operation unless notified by the Commission that such operation is not rule-compliant;

(iii) Discontinuing asymmetric sideband operation and reverting to symmetric sideband operation. The digital FM station must file Form 2100, Schedule 335-FM within 30 days of discontinuing asymmetric sideband operation; or

(iv) Decreasing total digital Effective Radiated Power from a level above -14 dBc to a level at or below -14 dBc. The digital FM station must file Form 2100, Schedule 335-FM within 30 days of decreasing power.

(6) Any digital FM station seeking authority to increase total digital Effective Radiated Power above -14 dBc must submit Form 2100, Schedule 335-FM. The submission must include a certification that the proposed FM digital Effective Radiated Power is permitted, using the table set forth in Table 1 to § 73.404(f). Certifications must be based on the most restrictive analog field strength of the proponent at any nearby first-adjacent channel station's 60 dBμ contour. The station choosing to operate with total digital ERP above -14 dBc may initiate such operation upon approval from the Commission.

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 *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, *Notice of Proposed Rulemaking* (*NPRM*), released on August 1, 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 *First Report and Order*

2. In the *First Report and Order*, the Commission finds that it is in the public interest to allow FM broadcast stations transmitting a hybrid analog-digital signal to operate with different digital effective radiated power (ERP) on the upper and lower digital sidebands, upon notification to the Commission on FCC Form 2100, Schedule 335-FM. This replaces the current procedure whereby a digital FM station must apply for an experimental authorization to operate with different digital ERP on the upper and lower digital sidebands (asymmetric sideband operation); this experimental authority must be renewed annually.

3. The FM digital radio system inserts redundant digital sidebands above and below a station's existing analog signal. The Commission's existing rules assume that digital power is the same on both digital sidebands, i.e., symmetric sideband operation. The advantage to asymmetric sideband operation is that it allows a digital FM station to operate with lower power on the digital sideband closer to a first-adjacent-channel analog FM station, thus reducing the potential for interference to that station, while enabling the digital FM station to increase power to the digital sideband where there is no or only a very distant analog FM station to protect from interference. For example, a Class A digital FM station on Channel 251 might have a Class A analog FM station on Channel 250 within 75 kilometers of the digital station, while being several hundred kilometers from the nearest analog FM station on Channel 252. In such a situation, the digital FM station would reduce digital ERP on the lower digital sideband, protecting the analog station on Channel 250, while increasing power and, therefore, signal coverage on the upper digital sideband where there is no adjacent channel station to protect. The total digital ERP transmitted over the two digital sidebands would be the same as it would be if both sidebands were transmitting at the same digital ERP (symmetric sideband operation), thus there would be no increase in the total digital energy emitted by the digital FM station.

4. The Commission in the *First Report and Order* adopts its proposal to allow digital FM stations wishing to use asymmetric sideband operation to do so by notifying the Commission using FCC Form 2100, Schedule 335-FM, and modifies that schedule by including fields to report the digital ERP being transmitted on each digital sideband, as well as the total digital ERP. It makes an exception, however, for digital FM stations operating on Channels 296 - 300 (107.1 - 107.9 MHz), at the top of the FM broadcast band, which must continue to seek experimental authorization for asymmetric sideband operation. This is deemed necessary to protect users in the lower frequencies of the Aeronautical Radio Navigation Spectrum (ARNS) from possible interference resulting from higher power on an upper digital sideband. The Commission further concludes that a station permanently discontinuing asymmetric operation need not disclose its reasons for doing so. It also implements the proposal that any FM licensees operating facilities under experimental or special temporary authorizations that are compliant

[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. 847 (1996).

[2] *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, Notice of Proposed Rulemaking, 38 FCC Rcd 7158 (2023).

[3] 5 U.S.C. § 604.

with the rules adopted in this proceeding may transition to asymmetric sideband operation by filing Schedule 335-FM notifications after the effective date of the rules adopted in the *First Report and Order*. Commenters generally supported the Commission's proposal to allow asymmetric sideband operation upon simple notice to the Commission, though some raised concerns regarding notifications, interference remediation, and the transition to asymmetric sideband operation. The Commission observes that adopting rules simplifying the process of initiating asymmetric sideband operation is likely to reduce inter-station interference rather than exacerbate it, and thus concludes that existing interference mitigation and remediation procedures are sufficient at the present time, but also concludes that Form 2100, Schedule 335-FM should be amended to provide fields for the notifying station to indicate the digital ERP transmitted on each digital sideband, as well as the total digital ERP.

5. This minor administrative change will help streamline processing of these requests and will further the Commission's efforts to transition all broadcast filings to the Bureau's Licensing and Management System (LMS).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. 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

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4] 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

8. The RFA directs the agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

9. *Radio Stations*. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[9] Programming may originate in their own studio,

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[4] 5 U.S.C. § 604(a)(3).

[5] *Id*. § 604(a)(4).

[6] *Id*. § 601(6).

[7] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[8] 15 U.S.C. § 632.

[9] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

from an affiliated network, or from external sources.[10] The SBA small business size standard for this industry classifies firms having $47 million or less in annual receipts as small.[11] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[12] Of this number, 1,879 firms operated with revenue of less than $25 million per year.[13] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

10. 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.[14] 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.[15] 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.

11. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[16] 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

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[10] *Id.*

[11] *See* 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

[12] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year. At this time, the 2022 Economic Census data is not available.

[13] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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 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.

[14] *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.

[15] *Id.*

[16] "[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).

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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

12. The *First Report and Order* adopts procedures that will create new reporting, recordkeeping, and compliance obligations for small digital FM stations that operate with asymmetric power on the digital sidebands. Specifically, it replaces the current requirement that digital FM stations request experimental or special temporary authorization for asymmetric sideband operation with a new, simplified notification procedure on existing FCC Form 2100, Schedule 335-FM. This form will be modified to collect the total digital ERP and the digital ERP on each of the upper and lower digital sidebands used by a digital FM station. Form 2100, Schedule 335-FM, will now be the means by which a small, digital FM station will report (or request authority in the case of an increase of total digital ERP above -14 dBc) the following actions: the initiation of hybrid digital operation; the initiation of asymmetric sideband operation at any power level, as well as the permanent discontinuance of asymmetric sideband operation; an increase of total digital ERP above -14 dBc; or a decrease in total digital ERP from a level above -14 dBc to a level below -14 dBc. Form 2100, Schedule 335-FM will also be amended to provide a digital FM station proposing to increase total digital ERP above -14 dBc to certify that it complies with the power levels set forth in Table 1 to amended section 73.404(f) (regulating In Band On Channel Digital Audio Broadcast Operations), which is based on the current formula used to calculate acceptable power levels, but adapted to calculate those levels on a per-sideband basis. As is currently required, a station choosing to increase total digital ERP to a level between -14 dBc and -10 dBc must still attach to its Schedule 335-FM submission an exhibit demonstrating that the proposed FM digital ERP is permitted for each digital sideband, using newly adopted Table 1 to § 73.404(f). However, the Commission will continue to require that small and other entities request experimental authorization for a digital FM station on Channels 296 - 300 seeking to engage in asymmetric sideband operation to avoid any potential issues regarding interference with the ARNS.

13. Requiring small and other entities to use FCC Form 2100, Schedule 335-FM for the provision of the digital ERP is minimally burdensome, as this form will collect the same or similar information the notifying FM station would use to request asymmetric sideband operation, and is less burdensome than preparing an application for experimental authorization and renewing such authorization annually. Small entities will likely use the same processes and professional staff to comply with the FCC Form 2100, Schedule 335-FM requirements. Accordingly, although there is not sufficient evidence quantifying the compliance cost of the adopted rule changes, the Commission anticipates the approaches it has taken to implement the requirements will have minimal cost implications and should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

14. 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."[17]

15. In the *First Report and Order*, the Commission considered a number of alternatives that will minimize the impact of the revised rules. Specifically, the Commission adopted measures to simplify the implementation of asymmetric sideband operation for digital FM stations, by notification through Form 2100, Schedule 335-FM rather than application for experimental authorization and annual renewal.

[17] 5 U.S.C. § 604(a)(6).

The Commission sought to weigh the impact of these measures on small and other entities against the public interest benefits gained from them and has determined that the benefits outweigh the costs. As some commenters have observed, the burden of filing an experimental application and annual renewals has likely discouraged many digital FM stations from implementing asymmetric sideband operation, and has therefore impeded the implementation of such operation and its corresponding benefits, including expanded signal coverage and interference protection. The Commission concludes that these benefits outweigh the burdens imposed by the current procedures, and justify the simplified process adopted in the *First Report and Order*.

16. The Commission also observes that adopting rules simplifying the process of initiating asymmetric sideband operation is likely to reduce inter-station interference rather than exacerbate it, and thus concludes that existing interference notification and remediation procedures are sufficient at the present time, but also concludes that Form 2100, Schedule 335-FM should be amended to provide space for the notifying station to indicate the digital ERP transmitted on each digital sideband, as well as the total digital ERP. While the provision of these items of information are a minimal additional burden, they consist of information that is readily available to the broadcaster, and will assist other FM stations in evaluating interference complaints.

17. The use of Form 2100, Schedule 335-FM will simplify required station submissions, and harmonizes such submissions with the recent transition of the Media Bureau's application filing system to LMS. The Commission also considered whether a station permanently discontinuing asymmetric sideband operation should be required to include a short statement disclosing its reasons for doing so when notifying the Commission, and determined such information was not necessary based on commenter input. This decision will eliminate an added burden to certain stations, as well as allow them to preserve the confidentiality of their business decision making. The Commission further concludes that digital FM stations currently using asymmetric sideband operation under experimental or special temporary authorizations shall be able to continue operation upon notification using Form 2100, Schedule 335-FM, provided such notification is submitted before the experimental authorization or STA expires. This option has been determined to be the least burdensome alternative, as compared to other options such as filing a one-time application with annual renewal. Finally, to avoid any potential issues regarding interference with the ARNS, the Commission will continue to require experimental authorization for a digital FM station on Channels 296 - 300 seeking to engage in asymmetric sideband operation. This will impact relatively few digital FM stations, and has been deemed necessary to protect ARNS users pending the results of testing by aviation industry stakeholders and the broadcast industry proponents of the new procedures.

G. Report to Congress

18. The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[18] In addition, the Commission will send a copy of the *First Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[19]

[18] *Id*. § 801(a)(1)(A).

[19] *Id*. § 604(b).

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
	)	

ORDER

Adopted: October 2, 2024 **Released: October 2, 2024**

By the Commission:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission (FCC or Commission) takes quick action to assist those affected by Hurricane Helene, Tropical Storm Helene, and Post-Tropical Cyclone Helene (collectively, the Helene Weather Events) by temporarily waiving certain Lifeline program eligibility rules to ensure that consumers receiving federal disaster assistance can easily apply for and enroll in the Lifeline program. The Helene Weather Events caused significant power, transportation, and communications infrastructure disruptions, in addition to property damage in homes, schools, libraries, businesses, and health care facilities throughout the impacted areas. The Commission has already taken a number of steps to assist in the disaster relief effort,[1] and our action today supplements and expands those activities. Because of the exigent circumstances arising from the Helene Weather Events, we find that there is good cause for further action to ensure that consumers in the affected areas receive critical assistance for their communications needs. As such, on our own motion, and consistent with the guidance detailed below, we temporarily waive the Lifeline eligibility requirements to permit households not already enrolled in the Lifeline program to enter the program if they are receiving individual assistance from the Federal Emergency Management Agency's (FEMA) Individuals and Households Program (IHP) as a result of the impacts of the Helene Weather Events. Such waiver will run for at least six months.

II. BACKGROUND

2. *The Helene Weather Events.* On Thursday, September 26, 2024, Hurricane Helene made landfall on Florida's Gulf Coast as a Category 4 storm with winds speeds of 140 mph before moving inland as a Category 1 storm and causing catastrophic flooding, significant infrastructure damage, and communications outages to affected areas in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.[2] More than two million residences, businesses, schools, and hospitals lost

[1] *See, e.g.*, FCC, Hurricane Helene (last visited Oct. 1, 2024), https://www.fcc.gov/helene (compiling FCC waivers, reports, and public notices related to the Helene Weather Events); Press Release, FCC, FCC Chairwoman Rosenworcel Statement on Hurricane Helene (Sept. 26, 2024), https://www.fcc.gov/document/chairwoman-rosenworcel-statement-hurricane-helene.

[2] *See* Alex Sundby, Tom Hanson, Brian Dakss, David Yeomans, CBS News, Hurricane Helene's death toll tops 100 as Southeast digs out from storm's devastation (Sept. 30, 2024), https://www.cbsnews.com/news/hurricane-helene-path-florida/.

power.[3] At least 135 people are dead, 600 missing, and thousands more unable to inhabit their homes due to damage or stranded due to flooding and road closures.[4] The President has approved a major disaster declaration for the States of Georgia, Florida, North Carolina, and South Carolina and an emergency declaration for the States of Alabama and Tennessee and the Commonwealth of Virginia, allowing authorities to provide disaster relief.[5]

3. Measures that the FCC has already taken include deploying personnel to affected areas to determine the impact to public safety and emergency alerting communications capabilities, activating the Disaster Information Reporting System to better monitor communications outage data and support targeted restoration efforts, initiating the Mandatory Disaster Response Initiative to require coordinated efforts by wireless providers to reduce outages, and waiving various rules and filing deadlines.[6] Our reporting also shows that there remain significant network outages across the impacted area.[7] In this Order, we waive certain Universal Service Fund (USF) Lifeline program rules to more effectively target support to the Designated Disaster Areas and to the people affected by the Helene Weather Events.

4. *The Lifeline Program*. The Lifeline program offers qualifying low-income consumers discounts on fixed or mobile voice or broadband Internet access service, as well as on bundled service.[8] Qualifying low-income consumers can receive a $9.25 monthly discount on Lifeline-supported broadband Internet access service or a $5.25 monthly discount on Lifeline-supported voice service.[9] Lifeline

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[3] *See* Siladitya Ray, Forbes, *More Than 2 Million Without Power as Hurricane Helene Moves Into Georgia as Category 1 Storm* (Sep. 27, 2024), https://www.forbes.com/sites/siladityaray/2024/09/27/more-than-2-million-without-power-as-hurricane-helene-moves-into-georgia-as-category-1-storm-photos/.

[4] *See* Gerrit De Vynck, Joel Achenbach, Emily Wax-Thibodeaux, and Ben Brasch, Washington Post, *As death toll mounts, Helene rescue efforts underway across Southeast* (Oct. 8, 2024), https://www.washingtonpost.com/weather/2024/10/01/hurricane-helene-aftermath-north-carolina-floods-damage/; Alex Sundby, Tom Hanson, Brian Dakss, David Yeomans, CBS News, *Hurricane Helene's death toll tops 100 as Southeast digs out from storm's devastation* (Sept. 30, 2024), https://www.cbsnews.com/news/hurricane-helene-path-florida/.

[5] *See* FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida (Sept. 28, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-florida; FEMA, President Joseph R Biden, Jr. Approves Major Disaster Declaration for North Carolina (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-major-disaster-declaration-north; FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for South Carolina (Sept. 30, 2024), https://www.fema.gov/press-release/20240930/president-joseph-r-biden-jr-approves-major-disaster-declaration-south; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Alabama (Sept. 26, 2024), https://www.fema.gov/press-release/20240927/president-joseph-r-biden-jr-approves-emergency-declaration-alabama; FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Georgia (Oct. 1, 2024), https://www.fema.gov/press-release/20241001/president-joseph-r-biden-jr-approves-major-disaster-declaration-georgia; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Tennessee (Sept. 28, 2024), https://www.fema.gov/press-release/20240928/president-joseph-r-biden-jr-approves-emergency-declaration-tennessee; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Virginia (Sept. 29, 2024), https://www.fema.gov/press-release/20240929/president-joseph-r-biden-jr-approves-emergency-declaration-virginia. We refer to Hurricane Helene, Tropical Storm Helene, and Post-Tropical Cyclone Helene as the Helene Weather Events.

[6] *See* FCC, *Hurricane Helene* (last visited Oct. 1, 2024), https://www.fcc.gov/helene; Press Release, FCC, FCC Chairwoman Rosenworcel Statement on Hurricane Helene (Sept. 26, 2024) https://www.fcc.gov/document/chairwoman-rosenworcel-statement-hurricane-helene; Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42 et al., Order, DA 24-1025 (WCB 2024).

[7] *See* FCC, Hurricane Helene Communications Status Report – Oct 1, 2024 (2024), https://www.fcc.gov/document/hurricane-helene-communications-status-report-oct-1-2024 (describing persistent network outages across the impacted states).

[8] 47 CFR § 54.401.

consumers residing on qualifying Tribal lands[10] can receive up to a $34.25 monthly discount on Lifeline-supported service.[11] Consumers can confirm their eligibility for Lifeline through the National Lifeline Eligibility Verifier (National Verifier). Applicants may qualify for the Lifeline program by participating in a qualifying federal assistance program (Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit) or by having an income at or below 135% of the Federal Poverty Guidelines.[12] Consumers living on qualifying Tribal lands can also qualify for the Lifeline program by meeting the above criteria or by participating in a qualifying Tribal-specific federal assistance program.[13] If an applicant does not participate in one of the qualifying programs, they may submit documentation that establishes that they meet the Lifeline program's income-based eligibility criteria.[14]

5. If the National Verifier cannot automatically confirm a Lifeline applicant's eligibility, documentation provided by the applicant to demonstrate that they qualify under the program-based eligibility requirements is manually reviewed by the Universal Service Administrative Company (USAC).[15] Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying Federal assistance program, program participation documents, or another official document demonstrating that the applicant, one or more of the applicant's dependents, or the applicant's household receives benefits from a qualifying assistance program.[16] If an applicant is trying to apply for Lifeline on the basis of their income, they can substantiate their eligibility by providing their prior year's state, federal, or Tribal tax return; a current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; a federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information.[17] If the applicant presents documentation of income that does not cover a full year, such as current pay stubs, the applicant must present the same type of documentation covering three consecutive months within the previous twelve months.[18]

III. DISCUSSION

6. On our own motion, and consistent with the guidance detailed below, we temporarily waive the Lifeline eligibility requirements to permit households to enter the Lifeline program if they are receiving individual assistance from the FEMA's IHP as a result of the impacts of the Helene Weather Events. Currently, FEMA has declared certain counties and Tribal Nations in Florida,[19] Georgia,[20] North

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[9] *See* 47 CFR § 54.403(a)(1)-(2).

[10] *See* 47 CFR § 54.400(e).

[11] *See* 47 CFR § 54.403(a)(3).

[12] *See* 47 CFR § 54.409.

[13] *See* 47 CFR § 54.409(b) (listing the following qualifying Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance, Tribally-administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), and the Food Distribution Program on Indian Reservations).

[14] *See* 47 CFR § 54.410(b)(i)(B).

[15] *See* 47 CFR § 54.410.

[16] *See, e.g.*, USAC, *Resolve Application Errors*, https://www.usac.org/lifeline/national-verifier/how-to-use-nv/resolve-application-errors/ (last visited Oct. 1, 2024).

[17] *See id.*

[18] *See id.*

Carolina,[21] and South Carolina[22] as within the Designated Disaster Areas and eligible for IHP assistance. Generally, the Commission's rules may be waived for good cause shown.[23] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[24] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[25]

7. We find that good cause exists to waive, for a period of six months from the date of release of this order, the Lifeline eligibility requirements in section 54.409(a)-(b) of the Commission's rules for households that are receiving individual assistance from FEMA's IHP as a result of the Helene Weather Events.[26] As noted, these events have tragically impacted thousands.[27] To the extent necessary for this waiver to have its intended effect, we also waive definitional portions of our rules that reference these requirements at 54.409(a)-(b) and the de-enrollment requirements tied to the existing Lifeline eligibility standards for those households seeking to enter the program under this waiver.[28] If the scope of households eligible for support through FEMA's IHP expands to cover other geographic areas in response to the Helene Weather Events beyond those counties and Tribal Nations listed in the existing disaster declarations, households in those areas would also be able to demonstrate eligibility for Lifeline based on receiving support through FEMA's IHP. FEMA's IHP[29] offers individual assistance and provides financial and direct services to eligible individuals and households affected by a disaster.[30] Households must apply for IHP support from FEMA, which verifies that a household's needs are directly caused by a

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[19] *See* FEMA, Designated Areas: Disaster 4828, https://www.fema.gov/disaster/4828/designated-areas (last visited Oct. 1, 2024).

[20] *See* FEMA, Designated Areas: Disaster 4830, https://www.fema.gov/disaster/4830/designated-areas (last visited Oct. 1, 2024).

[21] *See* FEMA, Designated Areas: Disaster 4827, https://www.fema.gov/disaster/4827/designated-areas (last visited Oct. 1, 2024).

[22] *See* FEMA, Designated Areas: Disaster 4829, https://www.fema.gov/disaster/4829/designated-areas (last visited Oct. 1, 2024).

[23] 47 CFR § 1.3.

[24] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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

[26] As the Commission has previously clarified, in the event that an impacted state implements a Disaster SNAP (D-SNAP) effort, residents participating in D-SNAP can already qualify for the Lifeline program because SNAP is already one of the qualifying programs for Lifeline. *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 38 FCC Rcd 8232, 8235 n.27 (2023). Such an enrollment would operate the same way as any other Lifeline enrollment with SNAP as the qualifying program, and consumers receiving D-SNAP would not need special permission or waiver to demonstrate their eligibility using D-SNAP.

[27] *See* Gerrit De Vynck, Joel Achenbach, Emily Wax-Thibodeaux, and Ben Brasch, Washington Post, *As death toll mounts, Helene rescue efforts underway across Southeast* (Oct. 8, 2024), https://www.washingtonpost.com/weather/2024/10/01/hurricane-helene-aftermath-north-carolina-floods-damage/; Alex Sundby, Tom Hanson, Brian Dakss, David Yeomans, CBS News, *Hurricane Helene's death toll tops 100 as Southeast digs out from storm's devastation* (Sept. 30, 2024), https://www.cbsnews.com/news/hurricane-helene-path-florida/.

[28] *See* 47 CFR §§ 54.400(a),(j), 54.405(e)(1).

[29] FEMA, *Individuals and Households Program*, https://www.fema.gov/assistance/individual/program (last visited Oct. 1, 2024).

[30] FEMA, *Individuals and Households Program*, https://www.fema.gov/fact-sheet/individuals-and-households-program (last visited Oct. 1, 2024).

declared disaster.[31] With this waiver, households benefiting from FEMA's IHP can use documentation confirming their participation in FEMA's IHP to participate in the Lifeline program. We note that while we are waiving the Lifeline program's eligibility requirements to temporarily allow FEMA's IHP as an eligible program, we are not waiving the program's requirement that limits participation in Lifeline to one benefit per household.[32] That limitation remains in effect for households seeking to enter the program by virtue of participation in FEMA's IHP. Individual economic households residing at the same address will still be able to participate in the Lifeline program by satisfying existing requirements documenting their independent economic status.[33]

8. New enrollments into the Lifeline program that rely on this waiver are permitted only for six months from the date of release of this Order. We believe that this time frame will allow sufficient time for consumers to seek support from FEMA's IHP and be in a position to provide appropriate documentation to USAC to take advantage of this waiver. However, we delegate to the Wireline Competition Bureau the authority to extend this period of initial enrollment for additional time if there is evidence of a continuing need for FEMA IHP participants to be able to apply for the Lifeline benefit. If the Bureau deems such an extension appropriate, it shall release a Public Notice announcing the extension no later than one month before the end of the initial six-month waiver period.

9. To implement this waiver, we direct USAC, the Lifeline program administrator, to put processes and procedures into effect that will allow consumers in the affected areas to enroll in the Lifeline program through their participation in FEMA's IHP. To this end, USAC shall ensure that its eligibility verification systems will allow it to receive documentation showing that a household is participating in FEMA's IHP as a result of the Helene Weather Events. USAC shall also ensure that such documentation aligns with the Lifeline applicant's identity information, to ensure that individual households seeking to rely on this waiver to enter the program are actually participating in FEMA's IHP. Once enrolled in the program based on participation in FEMA's IHP, subscribers will be permitted to continue in the Lifeline program for a period of no longer than twelve months from the date of their enrollment, and USAC should conduct recertification activities consistent with existing requirements to recertify eligibility annually and de-enroll subscribers that are no longer eligible to participate in the Lifeline program accordingly.[34] Ongoing participation in FEMA's IHP alone will not allow a subscriber to continue to participate in the Lifeline program when they reach their recertification period, but if the household is otherwise eligible to participate in Lifeline they can continue in the program after confirming such eligibility through USAC's recertification processes. Finally, USAC shall prepare outreach materials and communications to publicize this effort through its regular communications channels. All of USAC's efforts directed in this Order shall be completed with as much speed as possible.

10. In adopting today's waiver of the Lifeline eligibility requirements for households receiving FEMA IHP support, we are not changing any other Lifeline program rules or requirements. That includes the Lifeline program's usage requirement, to the extent that it is not waived by other Bureau action.[35] We also remind Eligible Telecommunications Carriers (ETCs) of their obligation to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."[36] The Commission expects that ETCs will publicize this opportunity to impacted households

[31] *Id.*

[32] 47 CFR § 54.409(c). Consistent with this waiver action, the obligation to satisfy subsections (a) or (b) of 54.409, as referenced in 54.409(c), will be considered met by an individual's participation in FEMA's IHP.

[33] *See* USAC, *What is a Household?*, https://www.lifelinesupport.org/what-is-a-household/ (last visited Oct. 1, 2024).

[34] 47 CFR §§ 54.405(e)(4), 54.410(f).

[35] *See Affordable Connectivity Program et al.*, WC Docket No. 21-450, Order, DA 23-723 (WCB 2023) (waiving the Lifeline usage requirements in the Affected Disaster Areas through Oct. 31, 2023).

and modify their application systems to allow FEMA IHP participants to quickly apply and enroll for the Lifeline program under this waiver.

11. *Protecting Program Integrity*. We remain committed to protecting the integrity of the Lifeline program. Although we grant the waiver described herein, program participants and service providers remain otherwise subject to program integrity reviews, audits and investigations to determine compliance with FCC program rules and requirements. We require USAC to use its normal processes to recover funds that we discover were not used properly. Moreover, we emphasize that we retain the discretion to evaluate the uses of monies disbursed through the Lifeline program and to determine on a case-by-case basis if recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the Lifeline program under our own procedures and in cooperation with law enforcement agencies.

IV. PROCEDURAL MATTERS

12. This Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Pursuant to 5 CFR § 1320.18(d), the Office of Management and Budget (OMB) has granted the Commission a temporary waiver of the PRA requirements specific to this waiver Order. Accordingly, we will not submit to OMB for review the information collection requirements that we describe in this Order.

V. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1, 4(i), 4(j), 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 154(j), 254, and 403, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 54.400(a), (j), 54.405(e)(1), 54.409(a)-(b) of the Commission's rules are WAIVED to the extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[36] 47 CFR § 54.405(b).